

LIST OF PERTINENT LAWS, REGULATIONS, POLICIES AND PROCEDURES THAT GUIDE WILDLIFE DIVISION MANAGEMENT

There is a hierarchy of laws, regulations, policies and procedures that govern how the Wildlife Division manages our lands. The Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, is the legislative authority that vests management of the states natural resources by the Department of Natural Resources. Part of the act, MCL 324.501, establishes the Natural Resources Commission and vests in it the power to develop the structure of the department to carry out its mission. The NRC may establish general policies related to natural resources management and environmental protection for the guidance of the director. Article III of the act provides for natural resource management.

Another set of federal regulations, policies and procedures also affect the division's management of natural resources. These are in effect because Michigan has elected to avail herself of the Sport Fish and Wildlife Restoration Acts. These federal acts provide funding to the states to conduct programs to restore, enhance and protect fish and wildlife resources. Before states can be eligible for these monies, however, they must pass state legislation assenting to the provisions of these federal acts. Michigan's Assent Legislation is contained within NREPA as MCL 324.40501. Compliance with the provisions and promulgated regulations, policies and procedures are summarized in the USFWS Manual part 523 FW 1.1.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.40501 Wildlife restoration; authority of department to cooperate with federal government; use of hunters' license fees.

Sec. 40501. The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government as defined in chapter 899, 50 Stat. 917, 16 U.S.C. 669 to 669b and 669c to 669i, commonly known as the federal aid in wildlife restoration act, and with rules and regulations promulgated by the United States secretary of agriculture under that act; and in compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Federal laws

[Endangered Species Act](#)

[Federal Aid in Wildlife Restoration Act \(Pittman-Robertson Act\)](#)

Michigan laws - Public Act 451

[Part 351 - Wilderness And Natural Areas](#)

[Part 355 - Biological Diversity Conservation](#)

[Part 365 - Endangered Species Protection](#)

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NRC policies

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Wildlife Division Procedures

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[2108.8 - Wildlife Flooding Projects - Operation and Maintenance](#)

[2405.5 - Lands - Implementing Special Land Use Rules and Regulations for State Game Areas in Zone 3](#)

FEDERAL LAWS

FEDERAL AID IN WILDLIFE RESTORATION ACT (PITTMAN-ROBERTSON ACT)

TITLE 16, CHAPTER 5B, Sec. 669g. - Maintenance of projects; expenditures for management of wildlife areas and resources.

(a) Maintenance of wildlife-restoration projects established under the provisions of this chapter shall be the duty of the States in accordance with their respective laws. [Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 669a of this title, shall include maintenance of completed projects.](#)

[Notwithstanding any other provisions of this chapter, funds apportioned to a State under this chapter may be expended by the State for management \(exclusive of law enforcement and public relations\) of wildlife areas and resources. Funds from the Wildlife Conservation and Restoration Account may be used for a wildlife conservation education program, except that no such funds may be used for education efforts, projects, or programs that promote or encourage opposition to the regulated taking of wildlife.](#)

(b) [Each State may use the funds apportioned to it under section 669c\(c\) of this title to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs.](#) The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

ENDANGERED SPECIES ACT

SEC. 7.

(a) **FEDERAL AGENCY ACTIONS AND CONSULTATIONS.-**

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) [Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency \(hereinafter in this section referred to as an "agency action"\) is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection \(h\) of this section.](#) In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

Michigan Law – Public Act 451

PART 351 - WILDERNESS AND NATURAL AREAS

324.35103 Review of state land; identification of certain tracts; determination of dedication; proposed alteration or withdrawal of previously dedicated areas; filing proposals; procedure for making dedication or denying proposal; exchange of dedicated land.

Sec. 35103. (1) The department shall annually review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than 10% of state land under the control of the department shall be dedicated pursuant to this subsection. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;--Am. 1996, Act 290, Imd. Eff. June 19, 1996.

324.35104 Proximity of wild and natural areas to certain urban centers; designation of private land or land controlled by other governmental units.

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

PART 355 - BIOLOGICAL DIVERSITY CONSERVATION

324.35503 State goal.

Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.
(2) This part does not require a state department or agency to alter its regulatory functions.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

PART 365 - ENDANGERED SPECIES PROTECTION

324.36502 Duties of department.

Sec. 36502. The department shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species of fish, wildlife, and plants in cooperation with the federal government, pursuant to the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, and with rules promulgated by the secretary of the interior under that act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

324.36503 Investigations; determinations; rule; review.

Sec. 36503. (1) The department shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the department shall promulgate a rule listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the state, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The department shall conduct a review of the state list of endangered and threatened species within not more than 2 years after its effective date and every 2 years thereafter, and may amend the list by appropriate additions or deletions pursuant to Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

PART 405 - WILDLIFE RESTORATION, MANAGEMENT, AND RESEARCH

324.40501 Wildlife restoration; authority of department to cooperate with federal government; use of hunters' license fees.

Sec. 40501. The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government as defined in chapter 899, 50 Stat. 917, 16 U.S.C. 669 to 669b and 669c to 669i, commonly known as the federal aid in wildlife restoration act, and with rules and regulations promulgated by the United States secretary of agriculture under that act; and in compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department.

PART 419 - HUNTING AREA CONTROL

324.41901 Regulation and prohibitions in certain areas; powers of department; area closures; hearings, investigations, studies, and statement of facts; regulations.

Sec. 41901. (1) In addition to all of the department powers, in the interest of public safety and the general welfare, the department may regulate and prohibit hunting, and the discharge of firearms and bow and arrow, as provided in this part, on those areas established under this part where hunting or the discharge of firearms or bow and arrow may or is likely to kill, injure, or disturb persons who can reasonably be expected to be present

in the areas or to destroy or damage buildings or personal property situated or customarily situated in the areas or will impair the general safety and welfare. In addition, the department may determine and define the boundaries of the areas. Areas or parts of areas may be closed throughout the year. The department, in furtherance of safety, may designate areas where hunting is permitted only by prescribed methods and weapons that are not inconsistent with law. Whenever the governing body of any political subdivision determines that the safety and well-being of persons or property are endangered by hunters or discharge of firearms or bow and arrows, by resolution it may request the department to recommend closure of the area as may be required to relieve the problem. Upon receipt of a certified resolution, the department shall establish a date for a public hearing in the political subdivision, and the requesting political authority shall arrange for suitable quarters for the hearing. The department shall receive testimony on the nature of the problems resulting from hunting activities and firearms use from all interested parties on the type, extent, and nature of the closure, regulations, or controls desired locally to remedy these problems.

(2) Upon completion of the public hearing, the department shall cause such investigations and studies to be made of the area as it considers appropriate and shall then make a statement of the facts of the situation as found at the hearing and as a result of its investigations. The department shall then prescribe regulations as are necessary to alleviate or correct the problems found.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

PART 515 - PREVENTION AND SUPPRESSION OF FOREST FIRES

324.51502 Department of natural resources; authority; appointment of assistants.

Sec. 51502. [The department shall have charge of the prevention and suppression of forest fires and shall appoint assistants as needed to implement this part.](#)

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

PART 517 - PREVENTION OF FOREST FIRES

324.51701 Legislation, rules, or policies creating conditions promoting, fostering, or leading to forest fires.

Sec. 51701. [The state or a department, bureau, board, commission, or other agency of the state or a political subdivision of the state shall not enact, adopt, promulgate, enforce, or practice any law, rule, policy, or concept that creates or tends to create a condition that promotes, fosters, or leads or may tend to promote, foster, or lead to the beginning or spreading of a forest fire that could jeopardize the public trust in the forests of the state or any private land contiguous to the forests of the state, except as may be required for the protection of the public health, safety, and welfare, or as prescribed for forest management or wildlife management programs under the authority of the department.](#)

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

PART 525 - DISPOSAL OF TIMBER FROM STATE LANDS

324.52501 Timber from state lands; disposal under control of department.

Sec. 52501. [The department is authorized to dispose of timber from any of the state lands under the control of the department under such rules and regulations as may be prescribed by the department.](#)

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Natural Resources Commission Policies

1005 - PUBLIC INVOLVEMENT IN ACTIVITIES OF DEPARTMENT

Issued June 10, 1993

<< Supersedes >>

Commission Policy No. 1033 Dated: January 1, 1977

<< Preparing Division >>

Office of Policy and Program Development

<< Preamble >>

Openness In government Is essential In our democratic Institutions, and Is not subject to question. Public agencies are servants of the people who have a right to become Informed about agency activities and, If they choose, to Involve themselves in those activities In a reasonable manner, avoiding serious disruption of legally designated agency activities. Citizen advisory committees can Induce citizen participation In government and also be helpful to agencies In decision-making and In developing approaches to new programs.

<< General Policy >>

Citizen participation and Interest In the activities of the Department shall be encouraged In all possible ways. Attention to citizen questions, Inquiries, complaints, and requests shall be considered a principal duty by employees at all levels. Serious disruption of normal duties Is to be avoided, but not at the expense of disregarding citizen communication. Citizen advisory committees shall be used In all cases where programs and activities are particularly sensitive to public opinion or Impinge on citizen activities and philosophies In such a way as to cause a substantial response, or an unusually high level of Interest.

<< Specific Policies >>

1. A portion of each public meeting of the Commission shall be set aside for citizen appearance. All other commissions, boards, councils, and other advisory bodies associated with the Department shall do likewise.
2. Public hearings and meetings shall be held when Increased Input from the public Is needed, as well as when legally required. These shall be held at times and places convenient to the public, adequate notice shall be given, and reasonable effort be made to provide the public with Information on the Issue Involved.
3. As time permits, employees shall attend and participate in both formal and informal meetings of organizations which have environmental and natural resource concerns.
4. Full cooperation shall be given to the Governor, Legislature and other governmental agencies in furthering the principle of public Involvement.
5. The Director may appoint advisory committees or special task forces to further the performance of duties.

1006 - DEPARTMENT POSITION - PRESENTATION AT HEARINGS AND MEETINGS

Issued July 8, 1993

<< Supersedes >>

Commission Policy No. 1032 Dated: January 1, 1977

<< Preparing Division >>

Office of Policy and Program Development

<< Preamble >>

At the many public hearings and meetings in which the Department is involved, It is highly important that the Department's position on the matter at hand be clearly and forthrightly presented. To maintain that the Department is a "neutral arbiter" is not a realistic position to advocate. The general public needs to know the purpose of the hearing or meeting and the nature of any proposal. Any other course of action will result in misunderstandings detrimental to the Department.

The Department's latitude for public dialogue and interaction in public meetings is normally greater than through public hearings. Public meetings are useful to facilitate communication and understanding when public input or reaction is sought prior to setting a definite course of direction. Dialogue and interaction with the public in public hearings is more formal involving legal requirements for public notice and taking of recorded testimony. Public hearings are usually the direct result of specific statutory provisions. The requirements set forth in this policy are not intended to apply to the informal contact Department staff may have with various members of the public who seek advice and assistance under a variety of situations and circumstances on a day-to-day basis. It does apply to statutory requirements for hearings and to deliberate initiatives the Department undertakes when it seeks public input or response to these initiatives.

<< General Policy >>

In all public hearings and meetings conducted by the Department, an opening presentation clearly explaining the purpose of the meeting or hearing shall be made. The presentation shall explain the purpose and any proposal at hand. In the situation where a license or permit application are involved with the Department deciding the matter, the explanation must be sufficient to provide the public a reasonable understanding of the application.

Presentations by Department staff should include:

1. A clear statement of the purpose with sufficient background and focus to convey a reasonable description of it.
2. Discussion of any alternatives considered.

3. Statement explaining the next step anticipated in the process for decision.

Presentations should be made by a Department spokesperson other than the meeting chairperson or hearings officer. Presentations should be prepared in writing and made a part of the hearing record or meeting file. Once the presentation has been made, the hearings officer or meeting chairperson should direct the remainder of the meeting or hearing. In no case should Department employees engage in emotional debate or argument during the hearing or meeting. The meeting chairperson/hearings officer should guide conduct.

<< Reference >>

This policy replaces Department Letter No. 193.

2005 - ISLAND MANAGEMENT

Issued February 10, 1994

<< Preparing Division >>

Office of Litigation and Program Services

<< Information >>

The Department of Natural Resources recognizes Michigan's islands as a unique and valuable resource. It is vitally important to protect their ecological, cultural and historical values for present and future generations. Department land management activities shall respect island resources and make every effort to manage, protect, and/or enhance their natural and historical character. In addition, the Department shall encourage Federal agencies, local units of government, other State agencies, tribal, corporate, and other private landowners to share in the implementation of this policy.

The term "islands" refers to all temporary, permanent, natural or artificially created land masses completely surrounded by fresh water.

The Director is hereby directed to place procedures into effect to implement this policy.

2109 - PHEASANT MANAGEMENT

Issued January 1, 1977

<< Preparing Division >>

WILDLIFE

<< Preamble >>

The pheasant is Michigan's most important farmland game bird. It is the best judgment of the Department, based on numerous and extensive surveys, that all suitable habitat in the State is now adequately stocked with pheasants. Stocking was done initially to establish pheasants in the wild and this was accomplished in all suitable areas by the mid-thirties. Once established, wild birds are much more capable of increasing populations to the carrying level than an artificial stocking program. Seasonal variations in the environment determine numbers and closing any county to hunting will not increase numbers. A pheasant's life span is short and there is little carry-over from year-to-year so most birds shot are of young-of-the-year. The more severe climate of northern lower Michigan and the Upper Peninsula will only support a spotty population. Most pheasants taken by sportsmen are shot on privately owned land.

<< General Policy >>

Stocking of pheasants--except for put-take hunting--is no longer productive and shall not be done except on an experimental basis with strains not now available to us. The Department shall cooperate with private landowners to improve range on their lands and State game lands in the pheasant range will be improved for pheasants as far as practicable and economically feasible. Maximum seasons and bag limits shall prevail except in the Upper Peninsula. Persons or groups shall not be encouraged to buy or raise pheasants for general release.

<< Reference >>

Procedure is contained in Wildlife Division manual - No. 11.

2204 – REFORESTATION

Issued January 1, 1977

<< Preamble >>

Experiments and experience during the last half century, changing conditions in wood utilization and use demands on State-owned wildlands have all precipitated changes in concepts and practices of land management.

These factors include wildlife management practices, utilization through improved technology of timber products and reforestation techniques both natural and artificial.

<< General Policy >>

Reforestation will be done in accordance with overall forest resource management plans. These plans are intended to eventually consider all major values of forest resources and best methods for achieving goals identified for a particular State forest. Tree planting may, in specific cases, be carried out to reforest seriously understocked areas. In other specific cases, it may be carried out as part of type conversion to species better adapted to specific sites than those now located there. Tree planting will be done only when artificial regeneration has been determined to be the most cost effective method for bringing about best land use for the area involved.

<< Reference >>

Procedure is contained in Forestry Division manual - Section 1.

**2405 - LANDS - GUIDELINES FOR IMPLEMENTING SPECIAL LAND USE
RULES AND REGULATIONS FOR STATE GAME AREAS IN ZONE 3**

Issued January 1, 1977

<< Preamble >>

The Department has the responsibility as authorized to establish rules concerning the use of land in State game areas in Zone 3.

<< General Policy >>

Wildlife management, with particular emphasis on game species, has been, and shall continue to be, the primary aim of State game projects. Plans, development, and management shall keep this aim in mind at all times. Other uses of the acquired land are approved only when such uses do not conflict with the primary objective of wildlife restoration.

<< Reference >>

This policy and referenced procedure replaces Department Letter No. 177.
Procedure No. 2405.5

2627 - LAND HOLDINGS - DEPARTMENT LAND HOLDINGS

Issued March 8, 2003

<< Preparing Division >>

Executive Division

<< Preamble >>

The Michigan Department of Natural Resources is committed to the conservation, protection, management, use and enjoyment of the State's natural resources for current and future generations. As part of fulfilling that mission, the Department of Natural Resources currently holds title to approximately 4.5 million acres of Michigan's land surface and to more than 6 million acres of its mineral rights on behalf of the citizens of this State. The Department manages these lands to conserve, protect, and provide public use and enjoyment of the natural resource, recreational, ecological, cultural, and historical values of all these lands for present and future generations of Michigan citizens and visitors to the State.

A substantial portion of these lands were purchased specifically for the natural resource and outdoor recreation values using restricted funds including, but not limited to, revenues from the hunting and fishing licenses, state park fees, and sale of forest products, to name but a few. The Department has acquired important lands through grants from the Michigan Natural Resources Trust Fund which is based on funds derived from the extraction of oil, gas, and minerals from State-owned mineral rights. The Department has also acquired key lands in part with federal funds such as Pittman-Robertson Fund, Wallop-Breaux Fund, and Land and Water Conservation Fund.

Still, the majority of the lands managed by the Department came into State ownership as a result of tax reversion in the 20th Century. While most of these lands acquired through tax reversion contribute significantly to helping the Department fulfill its mission, some do not. It appears that the costs associated with managing some of the more scattered land holdings may outweigh the conservation and outdoor recreation values those lands provide. In some cases it appears that the Department's cost of managing marginal land holdings may detract from achieving the best overall management of the more critical lands. Income from the sale of those tracts that are determined to contribute little to fulfilling the Department's mission would provide funds to acquire important private in-holdings within the State's lands. In addition, the costs and staff time which had been tied up in managing those marginal land holding could then be redirected to enhance the Department's ability to manage its remaining land.

Whether the lands were acquired by purchase or by tax reversion, the State of Michigan currently makes payments in lieu of taxes or swamp tax payments on all of these lands to local governments through appropriations to in the Department's budget. In recent years, appropriations have not increased enough to cover tax obligations, creating a deficit.

<< General Policy >>

The Commission and the Department shall work to assure that the Department's land holdings are managed to enhance and conserve Michigan's natural resources and outdoor recreational values.

The Department shall undertake a thorough review of its entire land holdings to identify those specific lands which are not contributing strongly to the fulfillment of the Department's mission as well as those private in-holdings and other private lands which, if brought into public ownership, would enhance the Department's ability to accomplish its mission.

The Department shall actively work to consolidate its land holdings through timely and focused use of its authority to exchange lands with willing owners and to purchase lands or rights in lands from willing sellers.

The Department shall use its authority to sell lands which it identifies as non-essential and use the resulting funds to purchase in-holdings and other lands which would enhance the Department's ability to better accomplish its mission.

The Department shall actively utilize other funding sources whenever possible to accomplish their mission.

The Department shall actively pursue partnerships and alternate land management and ownership arrangements where appropriate and effective in helping the Department to achieve its mission.

The Department shall work with the Natural Resources Commission, the Governor of Michigan, the Michigan Legislature, conservation organizations, and other private or public interests to appropriately address payments in lieu of taxes on the lands held and managed by the Department on behalf of the citizens of Michigan.

The Department may develop procedures as needed to implement this policy.

<< Reference >>

2601 - LANDS - DISPOSITION OF BUILDINGS ON STATE LANDS UNDER DNR JURISDICTION

Issued January 1, 1977

<< Preparing Division >>

Lands, Forestry, Parks and Wildlife

<< Preamble >>

As lands are acquired, the State comes into possession of many buildings, some useful, some having salvage value, and some being worthless. Proper disposition is essential.

<< General Policy >>

The Department shall carefully evaluate all buildings on land acquired by the State and make certain they are put to a useful purpose, sold for salvage, or razed. None shall remain vacant and unprotected. The first priority shall be to attempt to make use of them in carrying out management plans for the area. Historical or other cultural values associated shall be duly considered.

<< Reference >>

Procedure is contained in Forestry Division manual - Section 4.

2619 - LANDS - TRESPASS PROCEDURE ON STATE LANDS

Issued January 1, 1977

<< Preamble >>

The Department has the legal authority and responsibility to control trespass on State lands under its administration.

<< General Policy >>

The Department shall develop guidelines and procedures for reporting and prosecuting acts of trespass on State lands, and all Departmental employees shall be constantly on the alert for trespass involving State property.

<< Reference >>

This policy and referenced procedure replaces Department Letter No. 84.

Procedure No. 2619-19

2703 - NATURAL RIVERS

Issued March 9, 1978

<< Preamble >>

Michigan's rivers and streams, and their adjoining lands represent some of the State's most important natural resources. These areas are important for their recreational, scenic, historic, cultural, economic, scientific and environmental values. However, the beauty and quality of rivers is fragile and the existence of unspoiled, free-flowing stretches is diminishing. A program for identification, designation and protection of these free-flowing natural rivers is in the public interest. The responsibility for developing Michigan's state-wide system of designated natural rivers has been delegated to the Department of Natural Resources under authority of the Natural Rivers Act (Act 231, Public, Acts of 1970). This task involves two entities often in conflict: private

ownership of river frontage and protection of publicly-owned natural resources. Because of the impact on private land rights, the program must maintain high visibility in the minds of the public, private river front landowners, and local governmental officials.

<< General Policy >>

Selection of free-flowing rivers or river segments for inclusion in Michigan's natural river system will be based upon the specific qualities outlined in Section 3 of the Natural Rivers Act--water conservation, free-flowing condition, and fish, wildlife, boating, scenic, aesthetic, floodplain, ecologic, historic and recreational values and uses. Priorities for study and designation will be based upon the quality of the resource, the impending and anticipated threats to those qualities, and local initiative and support.

Prior to designation as a natural river, the Department will develop a long-range plan for the river and adjoining lands. The plan's objective will be the strong protection and enhancement of natural river values for the use and enjoyment of present and future generations. The plan will recognize the right and the need of the public to use and enjoy designated rivers, and if necessary, will contain a program for protection of the resource from overuse, including efforts to relieve public pressures on private lands. Zoning controls will be the chief means of controlling development and use on adjacent or affected lands. These zoning controls must be reasonable, yet sufficient to ensure a high level of protection to the natural and aesthetic qualities of the designated public resource and adjoining lands. Development of natural river plans shall include a high level of citizen and local government involvement. Local governmental officials, river front property owners and other citizens will be approached at an early stage in an earnest effort to enlist their knowledge and opinion on the river resource and its protection.

In administration of designated natural rivers, great emphasis will be placed on local control of protective zoning ordinances. Local governmental units will be strongly encouraged to adopt and enforce appropriate zoning controls. Every effort shall be made to re-enforce the idea that this is a program to protect a resource of great value to the citizens of the State, not a program to merely prevent development.

<< Specific Policies >>

1.State land within the designated area shall be administered and managed in accordance with the plan, and State management of fisheries, streams, waters, wildlife and boating shall take cognizance of the plan. Emphasis will be placed on Department programs which affect designated rivers, in line with the adopted river management plans, including: design, development, relocation or screening of Departmental facilities; acquisition of critical lands to provide recreational facilities, disperse use or relieve trespass on private lands; and implementation of other land, water and resource management programs which serve to protect and enhance the qualities of the natural river area.

2.Where a proposed Departmental use or facility on a designated natural river appears to contravene the purposes and objectives of the natural river designation, the project will be modified to conform to the objectives of the designation and the Natural Rivers Act or will be canceled. If a project is essential to the operation of other programs, but does not conform to the river management plan of a designated river, it must be submitted to the Natural Resources Commission for approval.

3.The Department shall provide technical assistance in drafting, processing and enforcement of local zoning for natural rivers protection.

4.The Department shall, upon request, provide technical advice to local river front property owners as to location and design of structures, management of private lands, planting and management of vegetation, river clean-up, and property tax benefits available under Act 116, Public Acts of 1974, as amended, or other relevant State statutes.

5 .Recommended planting materials will be supplied at cost to property owners by the Department on designated natural rivers when available.

6.The Department shall conduct an on-going public information program to explain the values and importance of a natural rivers system, describe the pressures which pose a threat to rivers and to outline steps which river front property owners, local governments, State agencies and others may take to protect this State's outstanding river environments.

<< Reference >>

Supported by Commission Action March 9, 1978.

Procedure No. 2703-3.

2705 - PRESERVATION OF AGRICULTURAL LANDS - FARMLAND AND OPEN SPACE PRESERVATION ACT

Issued May 15, 1983

<< Preamble >>

With the passage of the Farmland and Open Space Preservation Act, Public Act 116 of 1974, as amended, the State of Michigan recognized that the preservation of Michigan's agricultural land was a priority in resource management and protection.

The Legislature, in assigning the administrative responsibility to the Department of Natural Resources, recognized the existing resource responsibilities of the Department and its ability to carry out a program of this nature.

<< General Policy >>

The conservation and development of the natural resources of the state are of paramount public concern. [The Department shall commit itself to the preservation and maintenance of agricultural lands. Further, the Farmland and Open Space Preservation Program shall be established as one of the highest priorities within the Department's budgetary and administrative structure.](#)

Supported by Commission Action April 15, 1983.

2706 - SAND DUNE MANAGEMENT AND PROTECTION - DEPARTMENT OPERATIONS

Issued June 14, 1985

<< Preamble >>

The coastal sand dune formations that parallel portions of Michigan's Great Lake shoreline are a fragile and irreplaceable part of our natural heritage. Michigan's dunes collectively represent the world's largest accumulation of sand bordering a body of fresh water. The shoreline is marked with broad sandy beaches, low shore foredunes, massive dune bluffs - some open and desert-like, others stabilized with a rich hardwood forest cover. Nature has shaped and reshaped the Great Lakes region, fashioning the coastal zone that skirts the lakeshores. Here one finds a range of landscapes: wetlands, rocky outcroppings, beach ridges, and plateaus. But nowhere is the sculpting of natural forces more evident than in the dunes themselves.

These natural features are of significant importance to the state's economy because the superb scenic and aesthetic values of "duneland" serve as an attraction for the tourist industry, as do the opportunities for water-oriented recreation, hiking, camping, and nature study. In some cases, this rugged environmental setting is the last refuge for unique assemblages of plants and animals.

A broad variety of land use practices have continued over years past thereby creating various degrees of environmental impacts on these fragile geomorphic features. In certain instances, these practices have impaired, damaged, or destroyed the structural function and integrity of sand dune systems.

Michigan's sand dune formations are truly a valuable, irreplaceable, and extremely sensitive natural resource. The forces of nature that created these features shall, most likely, not be repeated.

Therefore, management decisions of the Department shall be guided by the primary objective of protecting these resources for the long-term enjoyment and use of present, as well as, future generations. The purpose of this Policy is to guide the - operations and public land management activities of the Department of Natural Resources in sand dunes.

<< General Policy >>

The Department of Natural Resources recognizes that Michigan's sand dune formations exhibit characteristics which are unique in the world. It is vitally important to protect Michigan's sand dunes for present and future generations. In accord with the following policy statements, Department operations shall respect Michigan's dune formations and make every effort to manage, protect, enhance, and preserve their natural character. In addition, the Department shall take all necessary steps to encourage development of inland sand for industrial purposes in lieu of coastal sand reserves. The Department shall make every effort to determine feasible and prudent alternative mining locations for sites within designated sand dune areas for which new permit applications may be received.

The term "designated sand dune area" which is used in this Policy, means land designated by the Department pursuant to Section 2 of Act No. 222 of the Public Acts of 1976. "Sand dune lands" means land within designated sand dune areas.

1. Acquisition and Disposal of Land.

a. Acquisition: The Department shall place a high priority on the acquisition of sand dune formations which lie within designated sand dune areas, including the acquisition of mineral rights where the State of Michigan only owns the surface rights. The factors listed in paragraph b, Offers and Suggestions for Acquisition, shall be used to determine the suitability of land for Department acquisition.

b. Offers and Suggestions for Acquisitions: The Department shall consider all offers of land or suggestions for acquisition within designated sand dune areas. A special committee composed of representatives of all land managing divisions as well as those administering programs which affect sand dune areas shall be given an opportunity to review and comment on the proposed acquisitions and disposals of land within designated sand dune areas.

Factors to consider when reviewing acquisition through gift, exchange or purchase shall include:

- length of water frontage
- quality of natural features in relation to other dune areas in public and private ownership
- potential as a recreational resource
- proximity to urban areas
- proximity of other public owned land
- presence of threatened/endangered species or plant communities
- threat of development

- cultural and historical significance
- other factors as may be appropriate.

For those parcels which exhibit several of the above factors, the Department shall pursue acquisition regardless of parcel size, except where the director has recommended, and the Natural Resources Commission has agreed that acquisition should not be pursued.

c. Disposal: The Department may dispose of land within designated sand dune areas through sale, exchange, or lease by specific Commission action only if one or more of the following criteria is met:

- 1) It is demonstrated that the land in question does not exhibit the natural elements characteristic of significant sand dune formations, and it is not part of a larger sand dune management unit.
- 2) The land is not part of a sand dune management unit and it is too small to be effectively administered by the Department with little prospect for expansion of public ownership in the future.
- 3) The owner or lessee of the land will be a governmental unit and enforceable protections are accepted which will guarantee protection of the land to an equal or greater degree than under Department administration.
- 4) The Commission finds that the requested use of the land is of such critical importance to public welfare that it outweighs the benefits derived from state ownership. A decision to dispose of land on the basis of this criteria shall only be made after opportunity for public comment.

Where the Department has initiated the proposal for disposal of land within a designated sand dune area, it shall be required that the land be offered first to a governmental agency, unit of government, or non-profit organization (only exchanges are permitted) which will accept conveyance conditions which will protect the sand dune character of the land. It may be required where the Department has initiated the proposal that disposal only be made under the conditions of this paragraph.

In considering proposals to dispose of land within a designated sand dune area, the purpose and intent of this Policy shall be recognized, as well as the Commission's responsibility to protect environmentally sensitive lands.

2. Management of Sand Dune Land.

a. Division Procedures and Standards: All division procedures and management standards for state owned land within designated sand dune areas shall be developed or revised to be consistent with this Policy.

b. Management Objectives: In establishing management objectives for state owned sand dune lands, the Department shall recognize a wide range of purposes of maintaining sand dunes in public ownership. The purposes may range from the protection of sensitive features with strict limitations on any human disruption, to the provision of opportunities for intensive recreational activities. The management objectives for sand dune lands and the corresponding intensity of use shall be established on the principle that the amount of human disruption should decrease in proportion to the significance of the sand dune features, with intensive use directed to sand dune areas of lesser significance or sensitivity. Decisions on amount of significance and sensitivity shall be based on criteria to be developed by the Department staff and approved by the Natural Resources Commission.

c. Management Plans: Lands in designated sand dune areas administered by the Department shall be grouped into management units, with administrative responsibility for a unit assigned to a Division in the Department. A management plan shall be developed for each management unit. The plan shall establish the management objectives for the sand dune management unit; the values both natural and social which are being protected or maximized through the management objectives; development plans for the unit, including maps showing facility locations; and construction and use guidelines. The plan shall be developed with formal opportunity for

participation by other Divisions in the Department/ affected governmental agencies and local units of government, and citizens. The plan for each unit shall be adopted by the Natural Resources Commission.

d. Use and Construction Activities: The use of sand dune lands and all construction activities shall be sensitive to the characteristics of particular sand dune area, its quality of natural features in relation to other dune areas in private and public ownership, and vulnerability to permanent damage. Use and construction activities shall be consistent with the management plan for the land.

3. Department Administered Grants and Financial Assistance.

The Department administers a number of financial assistance programs which provide money to local governments, agencies and organizations for a wide range of activities from park development to sewer construction. The activities from park development to sewer construction. The activities enabled by grants and other financial assistance or guarantees can have direct and indirect effects on sand dune lands. Consistent with the applicable statutes, grants and other financial assistance or guarantees awarded by the Department shall recognize the intent of this policy and minimize direct and indirect impact on sensitive dune areas.

4. Research, Education and Technical Assistance.

The Department shall actively pursue opportunities for research into the environmental qualities of sand dunes which has application to educational programs, technical assistance, regulatory programs, land management plans, and decisions on acquisition and disposal.

Through the diverse programs offered by the Department, opportunities shall be identified and exercised to implement educational programs and publications concerning Michigan's sand dunes.

The Department shall identify and publicize a source of technical assistance where government agencies, local governments, and citizens may receive advice concerning the sensitivities and values of sand dune areas, regulatory standards, and proper construction techniques which will minimize damage.

5. Commission Policies.

The Department shall review all Commission policies which affect sand dunes and recommend revisions to the Commission which are necessary for consistency with this Policy.

3110 - FISH MANAGEMENT PRIORITIES

Issued January 1, 1977

<< Preamble >>

The Department is responsible for fisheries management on the waters of the State. The priorities for such management are often hard to define because of varying levels of public or private riparian ownership. The overriding criteria, however, is need and public benefit which, when properly considered, will usually produce a decision that can be clearly justified.

<< General Policy >>

The Department shall establish priorities for fisheries management on waters of the State primarily on the basis of need, expected public benefits, and the desire for a balanced program. Riparian ownership and the level of public access of any particular water should have a bearing on the management priority decision but should not transcend the first considerations.

<< Reference >>

Procedure is contained in Fisheries Division manual - No. "Green" 1.

4601 - WASTE - SOLID WASTE DISPOSAL AREAS

Issued January 1, 1977

<< Preamble >>

The sanitary landfill method of refuse disposal as defined in the Solid Waste Disposal Act, Act 87, Public Acts of 1965, as amended, is an effective and proven method of permanent disposal of most kinds of waste.

<< General Policy >>

SECTION I. - STATE PARKS, RECREATION AREAS, GAME AREAS, WATER ACCESS SITES, STATE FOREST LAND - STATE DEVELOPED SITES

Public solid waste disposal areas shall not be permitted on State Parks and Recreation Areas, State Game Areas, and Public Water Access Sites.

Solid waste disposal areas to be used to service exclusively Departmental needs may be established on State Parks and Recreation Areas, State Game Areas, Public Water Access Sites and State Forest Lands under the following conditions:

1. All operations will be designed, licensed and operated to comply with Act 87, Public Acts of 1965, as amended, and the regulations developed thereunder.
2. The location of sanitary landfill disposal areas will be the responsibility of the Regional Director and the general location will be submitted for approval to the Bureau Chief having jurisdiction. Application for a solid waste disposal site license will be submitted to the Resource Recovery Division.
3. All solid waste disposal areas created by the Department of Natural Resources shall be for the exclusive use of the Department. Selection of sites and the location of roads, gates, fences and the location of the site itself will be planned by the developing unit to assure this control.
4. Any solid waste disposal area now in existence that does not meet the requirements of this policy will be physically improved to comply, or will be closed and covered in an approved manner.
5. If private or public collection or transfer or licensed disposal areas are reasonably available, even at a fee, the use of such facilities will be given priority over the use of State established sites.

SECTION II. - STATE FOREST LANDS - PUBLIC SITES

The Department, recognizing the need for keeping land and roadsides as free from rubbish and debris as possible, may issue sanitary landfill permits to public agencies to use State-owned forest lands as per the Department's policy on solid waste.

<< Reference >>

This policy and referenced procedure replaces Department Letter No. 162.

Procedure No. 4601.1

5501 - LAND USE

Issued January 1, 1977

<< Preparing Division >>

Program Review and Project Clearance

<< Preamble >>

Authority to implement land use policies in specific areas and under special conditions is granted to the Department by numerous statutes. Of special importance is Act 127, Public Acts of 1970, the Environmental Protection Act, which provides legal mechanisms to prevent or correct environmental damage. Also, Act 17, Public Acts of 1921, establishing the Department, places an overriding responsibility on the Department to protect and enhance the natural resources of the State. Wise land use and protection of natural resources are, beyond question, inseparable. By Executive Order 1973-2, the Governor has directed the Department to assume the responsibility for developing a program for the wise use of land.

<< General Policy >>

By way of Executive direction, statutory and constitutional authority, the Department shall by example, by positive programs and by other actions, promote the wise use and reuse of our land resource within its natural capability and in recognition of its relationship to water and air resources. Further, the Department will not in any way abet any new use of land and associated water and air resources which has the potential to cause major irreversible damage to Michigan's environment. Public as well as private projects, within the purview of the Department, must meet this test. Where specific authority is lacking to halt or control development judged to be harmful, all other means--persuasion, publicity, moral force--will be employed to prevent or mitigate environmental damage.

Wildlife Division Procedures

2005.1 - MANAGEMENT OF STATE OWNED ISLAND PROPERTIES

Number 2005.1 Issued February 10,1994

<< Subject >>

MANAGEMENT OF STATE OWNED ISLAND PROPERTIES

<< Information >>

Division Procedures and Standards:

All division procedures and management standards for State owned, Department managed land islands shall be developed or revised consistent with this policy and procedure _____.

Management Objectives:

The Department shall recognize a wide range of purposes for maintaining public ownership and managing State owned lands on islands. These purposes may range from the protection of ecological and natural functioning ecosystems with strict limitations on any human impacts; to the identification and management of significant historical and archaeological sites listed in or eligible for the National Register of Historic Places, to the provision of opportunities for intensive recreational and vegetation management activities.

In general, the degree of human impacts should decrease in proportion to the increasing ecological and/or historical sensitivity. The Department shall consider the concept of human carrying capacity on State owned islands in management plans.

The Department shall not undertake any island development, or habitat, species or vegetation manipulation until an inventory or evaluation has been performed encompassing natural, physical and historical characteristics. A division performing such an inventory or evaluation shall consult with other sources in examining significant natural features, endangered/threatened or unique species or natural communities, biodiversity, geological interests, accessibility and other indicators in determining the best management of the island property. A division shall also consult with the Department of State in the proper evaluation of significant archaeological, cultural or historical sites.

The Department shall develop an island classification system to assist with management of State owned island properties. This classification system shall include the number and types of use categories (ranging from wilderness to urbanized), that will assure the implementation of this policy. The classification system shall be based on many factors, including, but not limited to: ecological significance; geological significance; historic significance; potential for recreational use and/or development; and potential for urban or economic use and/or development.

The Department shall consider the economic impact of island development (or lack of development) on island or nearby communities when developing management plans. In most instances, such consideration shall not be overriding of ecological or historical values.

Management Plans:

Island property administered by the Department shall be grouped into management units where possible with administrative responsibility for a unit assigned to a division in the Department. A management plan shall be developed for each island or group of islands ten (10) acres or larger in size subject to the following:

The plan shall be developed as part of a larger management unit based upon the inventory information collected as specified above whenever the island or island group occurs within the boundaries of a geographic area assigned to a division.

Where an island or island group is not included within a larger management unit due to geographic location, a plan shall be developed based upon the current inventory information collected as specified above and before any island development, or habitat, species or vegetative manipulation is undertaken. Where no development, or habitat, species or vegetative manipulation is anticipated, a plan is not required, unless a special need is identified.

Where certain islands are being used for research purposes, and on the larger islands of Drummond, Beaver, and Bois Blanc, where there are significant ongoing management programs, the administering division may continue normal management activities while a management plan is being developed.

The plan shall establish the management objectives for the island property; the natural, historical and social values which are being protected or maximized through the management objectives; development plans for the island property, including maps showing facility locations; level of vegetation management and construction and use guidelines. The plans shall be developed with formal opportunity for participation by other divisions within the Department, as well as affected governmental agencies and local units of government, the Department of State, and citizens. The Department shall coordinate planning activities across ownership boundaries. The Department shall also coordinate with the adjacent states and Canadian provinces near those islands being incorporated into a management plan.

Construction and Use Activities:

The use of State owned island property and all construction activities on them shall be sensitive to the characteristics of the particular island, its quality of natural features in relation to other islands in private and public ownership, statewide, national or global significance, and vulnerability to permanent damage. Construction and use activities shall be consistent with the management plan for the island property.

Acquisition and Disposal of Island Property:

Acquisition: The Department shall place a high priority on the acquisition of island properties including, but not limited to, conservation easements, development rights, fee simple, and the acquisition of mineral rights. The Department shall consider all offers of land or rights in land relative to island property. The Director shall utilize the Land Exchange Review Committee, as well as representatives of those divisions administering programs affecting island and a representative from the Department of State, to review and make recommendations on the proposed acquisition of identified island properties.

Island Acquisition Review Criteria - Factors to consider when reviewing acquisition of island property or rights in island property through gift, exchange or purchase shall include:

- island size
- percentage of private versus public ownership
- reachability and safety of access
- uniqueness of island property

- quality of natural features in relation to other islands in public and private ownership
- potential as a recreational resource
- proximity of urban area
- presence of threatened/endangered species, or unique species, or natural communities
- cultural and historical significance
- ecological significance
- threat of development pressure
- examination of inventory information gathered
- absence of environmental contamination
- other factors as may be appropriate

For those properties which exhibit several of the above factors, the Department shall pursue acquisition, except where the Director has recommended, and the Natural Resources Commission has concurred that acquisition should not be pursued by the Department.

Disposal:

The Department may dispose of island property through the sale, exchange or lease of fee simple interests, conservation easements, or development rights. The Director shall request the review and recommendation from the Land Exchange Review Committee. Disposal of some or all of the rights of such properties can be made by specific Natural Resources Commission action only if one or more of the following criteria are met:

The new owner of the island property will guarantee protection of the island to an equal or greater degree than under Department management. For those islands acquired from the United States Department of Interior under authorization of the Michigan Public Lands Improvement Act of 1988, the Department shall not convey or otherwise transfer them to any person or entity other than to a political subdivision of the State.

The Natural Resources Commission may find that the requested use of the island property is of such importance to public welfare that it outweighs the benefits derived from public ownership. A decision to consider disposing of island property shall only be made after an opportunity for public comment.

Where the Department has initiated the proposal for disposal of island property, it shall be required that the property in question be offered first to governmental agencies, units of government, or nonprofit organizations which will accept conveyance conditions which will protect the island characteristics as identified by an inventory.

In considering proposals to dispose of island property, the purpose and intent of this policy shall be recognized, as well as the Natural Resources Commission's responsibility to protect environmentally sensitive or unique areas in Michigan.

Department Administered Grants and Financial Assistance:

The Department administers a number of financial assistance programs which provide money to local governments, agencies and organizations for a wide range of activities from park development to sewer construction. The activities enabled by grants and other financial assistance or guarantees can have direct and indirect adverse impacts on island ecosystems and/or archaeological sites. Consistent with the applicable statutes, all grants and other financial assistance or guarantees awarded by the Department shall recognize the intent of this policy and minimize direct and indirect impacts to the features identified on those islands. It is recognized that the Department of State administers a grant program directed at identifying and evaluating significant historical properties. The Natural Resources Commission urges both Departments to work together to maximize funds available from all sources for identification and evaluation of properties containing significant historical and natural resources qualities.

Research, Education, and Technical Assistance:

The Department, in cooperation with the Departments of Education and State, and other interested parties, shall actively pursue opportunities for research into the environmental and historical qualities of islands which have application to educational programs, technical assistance, regulatory programs, land management plans, and decisions on acquisitions and disposal of island property.

Through the diverse programs offered by State departments, opportunities shall be identified and exercised to implement educational programs and publications concerning Michigan's islands. The Department shall identify and publicize a source of technical assistance where government agencies, local governments and the public may receive advice concerning the sensitivities and values of island areas, regulatory standards and proper construction techniques which will minimize damage to islands.

The Department shall provide notice to all adjacent owners of property on islands of any island management plan development. Once such a plan is approved, the Natural Resources Commission shall encourage such property owners to engage in compatible uses on their property adjoining state owned island property. The Commission shall also encourage the cooperation and coordination between the Department and other adjacent states and Canadian provinces in managing their island properties in compatible uses.

All development activities on island properties, regardless of ownership, shall conform with all existing laws and regulations of the State of Michigan.

Commission Policies:

The Department shall review all Natural Resources Commission policies which affect islands and recommend revisions to the Natural Resources Commission which are necessary for consistency with this policy.

2108.8 - WILDLIFE FLOODING PROJECTS - OPERATION AND MAINTENANCE

Number 2108.8. Issued January 1, 1977

<< **Supersedes** >>

D.L. #131 Dated: May 11, 1955

<< **Subject** >>

WILDLIFE FLOODING PROJECTS - OPERATION AND MAINTENANCE

<< **Procedure** >>

The Wildlife Division is hereby made responsible for the operation and maintenance of wildlife flooding projects irrespective of what division administers the land upon which they are located. This responsibility is to include manipulation of water levels, habitat improvement on the impoundment areas, including open wetlands contiguous thereto, maintenance of structures, and other work on the impoundment area.

In any wildlife flooding project where fish management is involved, the Fisheries Division will be consulted before changes are made in the operational plans that might seriously affect fish habitat.

The division responsible for the administration of the area will be informed of major changes in the operational plan for wildlife flooding projects before the changes are put into effect on the ground. The notification will be given by the Wildlife Division employee who will effect the changes to the Department employee directly responsible for the land administration.

Development of public access sites, campgrounds or picnic grounds, timber management, and general land administration will continue to be the responsibility of the administering division, but clearance will be obtained from the Wildlife Division before developments are installed or major changes made in the cover on the margins (any 40-acre description touching a wildlife flooding project) of wildlife flooding projects to insure against depreciating wildlife values of the impoundments.

Such access as is necessary for the operation, maintenance, or development of flooding projects will be agreed upon between representatives of the Wildlife Division and the administering division.

This designation of responsibility will apply to all Wildlife Division flooding projects completed or to be completed, and to the Haymarsh Lake Flooding project which was constructed jointly by the Wildlife and Fisheries divisions. Decisions on the responsibility for operation and maintenance of future joint projects will be made when the projects are planned.

<< **Reference** >>

Policy No. 2108

2405.5 - LANDS - IMPLEMENTING SPECIAL LAND USE RULES AND REGULATIONS FOR STATE GAME AREAS IN ZONE 3

Number 2405.5. Issued January 1, 1977

<< **Supersedes** >>

D.L. #177 Dated: October 26, 1970

<< Subject >>

LANDS - GUIDELINES FOR IMPLEMENTING SPECIAL LAND USE RULES AND REGULATIONS FOR STATE GAME AREAS IN ZONE 3

<< Information >>

Growing conflicts, which have greatly accelerated in recent years, have required amending the land use rules and regulations as they affect the State game and wildlife areas. The specific rules set up to control the conflicting uses on State game and wildlife areas in Zone 3, which cause serious damage to wildlife interests, are listed below:

In addition to the other rules and regulations governing the use and occupancy of State lands, other than State parks and recreation areas, the following shall apply to the State game and wildlife areas in Zone 3:

<< Procedure >>

Unlawful Acts:

- 1.To camp between April 1 and October 1 except in areas specifically designated for such use.*
- 2.To operate a self-propelled motor or mechanically driven vehicle on other than designated roads, trails, or parking lots, or to park such vehicles more than 100 feet from the center of an established public road, trail or parking lot designated for such use, without proper written permission.**
- 3.To ride or lead a horse, other riding animal or pack animal on, or to allow such animal or any animal-drawn vehicle to use or travel on areas other than established public roads or trails designated for such use, without proper written permission.

*For purposes of this rule camping shall be defined as: The erection of any tent; the opening or setting up of a tent-type camper, the parking and occupancy of a travel or house trailer, or sleeping in any type motor vehicle or in a sleeping bag or in any manner after 10:00 p.m. (E.D.T.); or sleeping in any anchored, tied or moored boat or floating craft of any type in waters immediately adjacent to State-owned lands in any game area in Zone 3 after 10: 00 p.m. (E.D.T.) .

The term "designated" as used in this procedure shall be defined as: posted, marked, or signed.

**"Proper Written Permission" as used in these rules means a written permit issued by the Director of the Department of Natural Resources or a representative authorized by him so to do. Personnel of the Wildlife Division charged with responsibility for administering the game areas are authorized to provide the written permission where necessary and when desirable.

The following guidelines will be used in determining the areas or trails to be designated and how the designated areas and trails will be identified:

Campgrounds

- 1.Present established campgrounds in the Allegan State Game Area and Flat River State Game Area will be operated under the rules and regulations governing the operation of Department of Natural Resources

campgrounds, except those in State parks and recreation areas. (See Use and Occupancy of State Lands Other Than State Parks and Recreation Areas, Rule 2.)

2. Permanently established campgrounds will be marked with approved routed signs and will have a registration box and staked or otherwise marked camp sites. Areas previously used for camping, but where this use is to be eliminated, will be marked with "No Camping" signs.

3. No additional permanent campgrounds will be established without approval of the Wildlife Division staff. Such areas when designated will be equipped with at least minimum basic facilities, including wells, tables, and sanitary facilities, and operated in accordance with the established rules.

4. No individual camping permits will be issued to permit camping outside of established campgrounds.

5. Areas may be temporarily designated to accommodate group camping by boy scouts, girl scouts, campfire girls, church groups and other such public or semi-public groups. Such designation may be made only during the months of July, August and September, except in the Allegan State Game Area where the three-month limitation does not apply, and will be for a specific area to a specific group and for a short specific time, not to exceed 20 days (the length of time permitted for camping under the general land use rules and regulations). Areas may be temporarily designated to accommodate military organizations in accordance with Departmental policy. (See Procedure No.

6. Areas temporarily designated for group camping will not be signed with permanent signs.

7. The intent of these rules is to control and limit competing uses of the game areas; therefore, such competing uses should be discouraged. Many groups, especially youth groups, have areas of their own, but prefer to use the game areas. Wherever other areas are available to them, they should be encouraged to use them, rather than temporarily designated campgrounds on the game or wildlife areas.

Roads and Trails

The rule governing the use of roads or trails by motor vehicles or horses requires that the roads or trails where such use is permitted be so designated. All of the roads or trails where such use is permitted, except those roads that are a part of the State or county road system, will have to be signed. The following guidelines will govern the designation of roads and trails:

1. All public roads (county roads or State highways) will not be restricted and will be open to all traffic at all times in accordance with existing laws. (The respective county road commissions should be contacted to determine definitely which of the roads within the game areas are county roads.)

2. Game area roads or trails may be designated for use by motor vehicles or horses or both.

3. Roads or trails may be designated for use part of the year and closed part of the year, but when they are open to automobile traffic, they will be available for use by other motor vehicles and horses, except as indicated below.

4. Game area roads and trails will not be designated for use by horses or other riding, driving, or pack animals during the open season for hunting deer (both bow and gun seasons).

5. Some game area roads may be designated as administrative roads and closed to all traffic except Department employees and authorized persons (such as share-croppers, timber operators, etc.). Such roads will be signed and barricaded with gates, cables, etc. to inform the public that they are not open to public travel other than by walking.

6.Many game area roads and trails will be permanently closed to all travel, except by walking. Such roads will also be signed and barricaded with gates, cables, fallen trees, ditches, posts, large stones, or other physical barriers.

7.Off-the-road parking areas will be provided wherever necessary and feasible when roads or trails commonly used by hunters and others are closed.

8.Signs will be erected along the main entrance roads into game or wildlife areas to inform the public that motor vehicles and horses or other riding, driving, or pack animals will be restricted to the public roads or trails designated for their use.

9.Game area roads or trails, where motor vehicles and/or horses will be permitted, must be marked with signs or other suitable markers.

10.No permits will be issued to allow motor vehicles or horses to use any off-the-road areas at any time, except that permission may be granted for judges or dog handlers at authorized hunting dog field trials to ride horses in their official capacity during the trial.

Changes

No changes will be made in the above rules and regulations or in these guidelines without prior approval of the Wildlife Division.

<< Reference >>

Policy No. 2405



521 FW 1

Eligibility Standards for Wildlife Restoration

FWM#:380 (Supersedes 521 FW 1,12/17/92,
FWM 059)

Date: October 10, 2001

Series: State Grant Programs

Part 521: Federal Aid Program Eligibility

Originating Office: Division of Federal Aid

1.1 What is the purpose of this chapter? This chapter provides eligibility standards for the Federal Aid in Wildlife Restoration Program. As used in this chapter, the term "we" refers to the Fish and Wildlife Service and the term "State" refers to State fish and wildlife agencies and other entities eligible to participate.

1.2 What is the authority for this program?

A. [Federal Aid in Wildlife Restoration Act of 1937](#), as amended, ([16 U.S.C. 669-669i](#)) authorizes the Secretary of the Interior ". . . to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth" Section 1 concludes with ". . . all projects shall conform to the standards fixed by the Secretary of the Interior."

B. [50 CFR 80](#).

C. [43 CFR 12](#).

1.3 Who administers this program?

A. The Director, Fish and Wildlife Service, is the Secretary's representative in matters relating to the administration and execution of the Federal Aid In Wildlife Restoration Program ([50 CFR 80](#)).

B. The Assistant Director--Migratory Birds and State Programs provides national oversight for the program.

C. Regional Directors will administer the Federal Aid in Wildlife Restoration Program within their Region, to include approving grant proposals, monitoring performance of projects within an approved grant, and monitoring compliance with applicable Federal laws and regulations.

1.4 Who can participate in this program? State fish and wildlife agencies [WR Act Sec 1] and the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands [WR Act Sec 8A].

1.5 What are the requirements to participate? To be eligible, States must have assented to the provisions of the Act and passed laws for the conservation of wildlife that include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of the State fish and game department [50 CFR 80.3]. Each year within 60 days of the apportionment notice, States must notify the Secretary of the Interior that they want to participate in the program for the year [50 CFR 80.9].

1.6 Does a grant recipient have to comply with any laws or regulations?

Grantees must comply with all applicable Federal laws and regulations, as a condition of acceptance of Federal funds [50 CFR 80.21]. In addition to the laws and regulations specific to the grant program, there are numerous other compliance requirements for Federal grant programs. Those that are generally applicable to all Federal grant programs are "assurances," since grantees must provide assurance that they will comply with applicable provisions. 522 FW 1 provides an assurances checklist for construction and nonconstruction grants that States may use in developing a Grant Proposal. (See 522 FW 1 and 523 FW 1.)

1.7 For what purposes can States use Wildlife Restoration funds? The following are eligible purposes under the Federal Aid in Wildlife Restoration Program. Part 522 contains additional information on eligible grant purposes.

A. Restoration, conservation, management, and enhancement of wild birds and wild mammals, and providing for public use and benefit from these resources [WR Act Sec 2 and 50 CFR 80.5(a)(1)].

B. Educating responsible hunters and archers in skills, knowledge, and attitudes [WR Act Sec 8(b) and 50 CFR 80.5(a)(2)].

1.8 What are ineligible activities? The Federal Aid in Wildlife Restoration Act prohibits using Federal Aid funds for certain purposes. In addition, the rules and policies (50 CFR 80) specify certain other purposes or activities that are not consistent with the grant program purposes and are also ineligible. The following is a summary of ineligible activities:

A. Public relations activities that promote organizations or agencies and that do not apply to educational, technical assistance, or outreach activities specifically related to accomplishment of Federal Aid grants or programs [50 CFR 80.6(b)].

B. Activities whose purpose is producing revenue. This includes all processes and procedures directly related to the printing, distribution, issuance, or sale of licenses, permits, etc., imposed by law or regulation. It also includes the acquisition of real or personal property for the purpose of rental, lease, sale, or other commercial purposes [50 CFR 80.14(c)].

(1) The activities and associated costs of the development and maintenance of an automated licensing system are eligible for Federal Aid funding to the degree that it supports development of databases for storing State management information, or that would improve the States' license certification process [50 CFR 80.10]. In such cases, the grant proposal must contain an allocation of costs between eligible and ineligible activities [50 CFR 80.15(c)].

(2) The production of income that results from otherwise eligible activities, incidental to these activities, is not prohibited. Examples are sale of surplus commodities, collection of user fees, etc. [50 CFR 80.14(c)]

C. Providing services or property of material value to individuals or groups for commercial purposes or to benefit such individuals or groups [50 CFR 80.5(a)(1), 50 CFR 80.14(c)]. This does not prohibit providing technical assistance to a private landowner or operator where a public benefit will be served [50 CFR 80.5(a)(1)] (see 522 FW 14).

D. Enforcement of game and fish laws and regulations. This includes routine patrol, investigations, and law enforcement training [50 CFR 80.6(a)]. This does not prohibit activities necessary to accomplish Federal Aid grant purposes, or to protect Federal Aid assets, such as control of public entry. Nor does it prohibit activities to ensure public health and safety on Federal Aid areas [50 CFR 80.5(a)(1)].

E. Establishment, publication, and dissemination of regulations issued by a State pertaining to the protection and utilization of fish and wildlife resources. Includes laws, orders, seasonal regulations, bag limits, creel limits, license fees, etc. [50 CFR 80.6(a)] This does not prohibit the scientific collection of information needed to support management recommendations [WR Act Sec 2].

F. Stocking of game animals for the purpose of providing hunting of the animals stocked without objectives for restoration or establishment of self-sustaining populations [WR Act Sec 2, 50 CFR 80.5(a)(1)].

G. Furnishing public facilities, equipment, or services in excess of the minimum required to meet grant purposes or health and safety standards [50 CFR 80.13(d), WR Act Sec 1].

H. Wildlife damage management activities.

(1) Wildlife damage management activities, including removal or control of predatory, nuisance, or depredating animals; purchase or application of repellants or toxicants; installation of control pipes, culverts, fences, or other barrier or

exclusion structures; or compensation for damage caused by predatory or depredating animals, if one or more of the following conditions apply:

(a) State prohibits or restricts conservation measures, such as hunting and trapping, for the species causing damage to a level that compromises the ability of the State fish and wildlife agency to reasonably attain its wildlife management objectives (excepting circumstances where firearms, archery, or trapping restrictions for valid public safety reasons as verified by the agency preclude hunting or trapping, or the restrictions are the result of Federal primary legal authority).

(b) State has specifically delegated management authority for the animals in question to an agency or entity other than the State fish and wildlife agency.

(c) State fish and wildlife agency does not have control and expenditure authority over use of license fees for wildlife damage management.

(d) The primary purpose of the wildlife damage management activity is not an eligible activity in the Wildlife Restoration Program.

(2) If conditions (a), (b), (c), or (d) apply, a State fish and wildlife agency may still use Federal Aid funds to monitor wildlife damage and provide technical guidance, exclusive of actual management activities, if the Federal Aid grant documents and approves the activity. Payments for wildlife damages are not an eligible use of Federal Aid funds.

1.9 Are there instances when a State could use license fees for wildlife damage management? We allow the use of license fees for wildlife damage management (including predator control) or damage compensation that helps achieve fish and wildlife management goals if the State fish and wildlife agency has:

A. Control and expenditure authority over these funds, and

B. Management authority over the animals in question.

1.10 When would a diversion of funds occur?

A. A diversion of funds under [50 CFR 80.4](#) would occur if a State uses license funds for wildlife damage management where one or more of the following conditions apply:

(1) State prohibits or restricts conservation measures, such as hunting and trapping, for the species causing damage to a level that compromises the ability of

the State fish and wildlife agency to reasonably attain its wildlife management objectives (excepting circumstances where firearms, archery, or trapping restrictions for valid public safety reasons as verified by the agency preclude hunting or trapping, or the restrictions are the result of Federal primary legal authority).

(2) State has specifically delegated management authority for the animals in question to an agency or entity other than the State fish and wildlife agency.

(3) State fish and wildlife agency does not have control and expenditure authority over use of license fees for wildlife damage management.

B. Even if one or more of the conditions in subparagraph A apply, State fish and wildlife agencies would not be in diversion if they use license fees to provide technical guidance, consultation, permitting, and monitoring of wildlife damage, exclusive of actual management activities, such as removal of animals. We allow the use of fees for control of exotic species not under authority of the State fish and wildlife agency if necessary to restore or maintain populations of species under the State agency's authority.

C. If a diversion of license revenues occurs, the State becomes ineligible to participate under the Wildlife Restoration Act from the date we declare the diversion until the State satisfies the requirements of [50 CFR 80.4\(d\)](#).

1.11 Where can I find additional guidance? [Part 522](#) contains general administrative requirements and program standards for documentation and execution of the Federal Aid in Wildlife Restoration Program. We intend the guidance to be thorough and current; however, grantees should not rely on it as a sole source. Regional Offices will answer specific questions.

State Grant Programs Part 522 Federal Aid Program Guidance

Chapter 6 Land Acquisition

6.1 General. This chapter provides guidance on projects for the acquisition and use of lands or waters to carry out eligible purposes under any of the grant programs. For this chapter, land acquisition means the acquisition of real property or interests in real property by fee title, lease, easement, or any other method consistent with State law or regulation.

6.2 Eligible Purposes. Land acquisition projects must have objectives related to one or more of the following purposes.

A. Protecting or maintaining habitat conditions for fish or wildlife species by placing land under public control or ownership.

B. Developing or improving habitat conditions to enhance carrying capacity.

C. Providing public access for the use of fish and wildlife resources.

D. Acquiring sites for the construction of buildings or other structures needed by the State to meet program needs, such as offices, laboratories, or public use facilities.

6.3 Documentation of Proposals. The project statement for land acquisition projects should contain the following information.

A. Need. State the problems or deficiencies that the acquisition of land will correct or improve.

B. Objective. Provide a concise statement of what will be acquired and the purpose which the land will serve. For example:

To acquire in fee title approximately 13,450 acres (3,009 ha) in Pearl River County to be operated as a wildlife management area and public hunting area.

To acquire by lease, easement, or fee title 8,000 acres (3,239 ha) of prime deer range adjacent to deer management areas 46 or 47 to reduce hunting pressure on the existing areas.

Acquire 10 acres (4 ha) for the construction of a target range for hunter education training and public use within 1 hour's driving time from Lotus City.

C. Expected Results and Benefits. Identify, and to the extent feasible quantify, the type and amount of recreation to be provided, effect on wildlife populations, educational benefits to be realized, or other benefits as a result of this project. For example:

The area acquired is expected to provide approximately 2,000 hunter use days in pursuit of big game, small game, and waterfowl annually.

Planned management is expected to increase the deer herd to approximately 500 head with an annual harvest of 125.

The area acquired is expected to provide 500 days of deer hunting, 200 days of turkey hunting, 200 days of squirrel hunting, and 400 days of nonconsumptive recreation use annually.

D. Approach. Describe the present ownership, habitat type, and how the area will be managed. Include a schedule of the lands to be acquired, estimated costs, and the legal rights to be acquired, i.e. fee title, easements, or other long-term acquisition.

E. Location. Identify where the land will be acquired with a location map to outline project boundaries and their relationship to access routes.

F. Estimated Cost. Provide the estimated cost for the acquisition. If applicable, separately identify the estimated costs for land, appraisals, relocations, and other major items of cost.

6.4 Documentation to Support the Grant Proposal. General information on documentation to support the Grant Proposal is contained in [522 FW 1.4](#). Provide, with the Grant Proposal, information needed by the Regional Director to determine whether the intended use of the land will have a significant impact on the environment. Additional information on [National Environmental Policy Act requirements](#) is contained in Part 523, Federal Aid Compliance Requirements.

6.5 Documentation to Support the Grant Agreement. The following information, as applicable, should be submitted with the Grant Agreement. (See [522 FW 1.7](#) for general information on documentation to support the Grant Agreement.)

A. A description of the real property to be acquired.

B. An appraisal report for the property to be acquired.

C. Purchase options or agreements.

6.6 Costs. General requirements related to allowable costs are in [43 CFR 12.62](#) and [522 FW 1.11](#). The following are specifically related to acquisition projects.

A. Except for preliminary costs, as provided below, costs for the acquisition of lands or interests in lands incurred prior to approval of the Grant Agreement by the Regional Director, are not allowable (See OMB Circular A-87, Attachment B, C.3). The State is considered to have incurred the costs for land on the date the State becomes legally obligated for the purchase. Examples of when an acquisition cost is incurred are when a contract to purchase is executed or when an option is exercised. Prior approval by the Regional Director is evidenced by an approved Application for Federal Assistance and the obligation of Federal funds through an approved Grant Agreement.

B. Costs for the acquisition of real property may include the costs for biological or engineering reconnaissance, appraisal, or other preliminary project costs if specifically provided for in the Grant Agreement. If the State has incurred these costs prior to approval of the Grant Agreement, the State may request the Regional Director to reimburse those costs as preliminary project costs when itemized in the project documentation.

C. The Federal share of project costs will be based on either the actual price paid or the fair market value, whichever is less. (See section [6.9](#) for guidance on the determination of value.)

D. The costs for land acquired under the Federal Aid in Sport Fish Restoration program may be financed over an extended period of time, subject to the requirements in [50 CFR 80.25](#).

6.7 Special Conditions. The following conditions are specifically applicable to the acquisition of real property using Federal funds.

A. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Government-wide regulations implementing this Act as published by the U.S. Department of Transportation in 49 CFR 24.

B. The purpose for which the property will be used is a determinant of whether other conditions will apply. The following are examples of these conditions, which should be taken into consideration prior to the acquisition.

(1) If construction is anticipated in a floodplain or wetland, then Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, will apply.

(2) If the site has known or potential cultural or historic importance, the National Historic Preservation Act of 1966 will apply.

(3) If the site contains, or the proposed use may impact, endangered species, section 7 of the Endangered Species Act will apply.

(4) If the intended use of the property is anticipated to trigger the development of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), the EA or EIS will apply to the acquisition.

C. Real property must continue to serve the purpose for which acquired (See [50 CFR 80.14](#) and [43 CFR 12.71](#)). If the State believes that the property can no longer serve this purpose, the property may be sold, traded, or the purpose changed, with the prior approval of the Regional Director.

D. Minerals, oil, gas, timber, grazing rights, and other real property are normally considered a part of the land. These interests may be separated from the land by sale, lease, easement, or other method of transfer. However, the separation must be compatible with the purpose(s) for which the land was acquired. Revenue from the sale, lease, or easement may be considered program income. (See [50 CFR 80.14](#) and [43 CFR 12.71](#).)

E. The State must obtain approval of the Regional Director prior to granting easements through Federal Aid acquired lands. The Regional Director may grant blanket approval if the State's system for reviewing and granting easements is considered adequate to protect the Federal Aid program interests in the land. To obtain blanket approval, the State should submit a request to the Regional Director. The request should describe the State's system for reviewing and granting easements.

F. Lands or waters may not be acquired for the purpose of mitigating fish or wildlife habitat losses, where the obligation to mitigate is incurred by another Federal or State agency.

6.8 Performance Reports. Within 90 days after the end of the grant agreement period the State must submit a performance report on the project (See [522 FW 1.22](#)). The end of the grant period is the date shown on the Grant Agreement. The performance report must contain the following information.

A. Summary of Land Costs. Furnish a schedule showing seller, acreage, appraised value, price paid, relocation costs, and other costs for each tract. Other costs of acquisition (appraisal, negotiation, title search, land surveys, etc.) may be shown as a lump sum.

B. Title Vesting Evidence. Furnish a certificate by the Attorney General or other authorized State official that the title to the property acquired is vested in the State. A title insurance policy or title certificate may be substituted for the Attorney General's certificate. The certificate or title insurance policy must include a correct legal description and the acreage of the property involved. The description may be given by reference to a deed or plat, provided a copy of the document accompanies the certificate or policy. A final judgement will suffice in condemnation cases. On per-unit purchases, the exact acreage, footage, or mileage shall be indicated.

C. If the acquisition could not be acquired within the period specified, provide a statement of the problem, the actions to be taken to resolve the problem, and when it is anticipated that the acquisition will be completed.

6.9 Real Property Valuation. The following applies to the valuation of real property acquired under Federal Aid programs.

A. The current fair market value of property acquired in fee title may be determined by any one of the following methods.

(1) Price fixed by law (e.g., lands held by a State trust fund, county school district, etc.)

(2) Property acquired at public auction or by sealed bid.

(3) Property acquired by condemnation where the value is established by the court.

(4) Value estimated by a State-licensed or certified appraiser, as provided by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, using generally accepted techniques recognized by the appraisal profession. The appraisal must be reviewed by a certified Review Appraiser. When competent review services cannot be obtained by the State or special expertise is required, the State may request assistance from the Regional Director.

B. The fair market value of easements and rights-of-way may be established by using any professionally accepted market value procedure.

C. A Memorandum Opinion of Value ([Exhibit 1](#)) may be employed in unique situations involving the appraisal of minimal values, to include appraisal of rights-of way, small low-valued lands, or fractional interests. Minimal values, generally considered to be less than \$10,000, may largely be a matter of judgement because they are unsupported in the market place. Memorandum opinions should contain all the essential ingredients of a full appraisal report presented in abbreviated form. All memorandum opinions of value are subject to review and approval by the Regional Director.

D. The value of real property contributed by the State or by others is determined in accordance with [43 CFR 12.64](#).

6.10 Identification of Property Acquired. Real property should be identified with appropriate signs as to the Federal Aid program under which the property was acquired. The appropriate Federal Aid program symbol may be used for this purpose. If the areas are open to the public, provisions must be made to inform the public of the location, boundaries, and any restrictions on use.

SAMPLE MEMORANDUM OPINION OF VALUE

Subject: Memorandum of Value for Fee Title

The Donnally tract is located in Benton County, Oregon, lying approximately 14 miles southwesterly of Corvallis, Oregon, and about one mile west of U.S. Highway 99W. The tract is bounded on the north by tracts (18) and (25), the east by tract (18), and the south and west by Barclay Road. See attached survey plat and description for an exact delineation of the subject. I was accompanied by the owner on an inspection of the property on Monday morning, September 30, 1992.

Tract (27) is a 7.4-acre (3 ha) parcel, being a part of a larger 55+ acre (22.3 ha) ownership. The subject is physically severed by a gravel county road and in my opinion this acquisition will cause no severance damage nor constitute a business loss to the remainder.

The physical character of the subject is low and brushy. Because of its proximity to Muddy Creek, tract (27) is inundated during periodic high water flows of the creek. Being located within a flood plain, the subject has no uses such as a rural cabin or homesite development. This opinion is based on typical investor attitudes with respect to small subdivisional acreages in rural areas.

No improvements presently exist on the subject.

Recent market sales and listings of property lying in close proximity to the tract indicate a value range of \$325 to \$500 per acre. These values are indicative of market attitudes with regard to acreages ranging from 48 acres (19.4 ha) up to 391 acres (158.3 ha). The subject itself sold as a 55-acre (22.3 ha) parcel for \$400 per acre in December 1990.

It is noted that larger ranch properties, which have been subdivided, have resold as small recreational tracts for \$800 to \$1,000 per acre. These small properties, however, have view and topographical advantages over tract (27).

Therefore, based on the sales data as previously discussed, it is my opinion that the market value of tract (27) is \$650 per acre or \$4,810 overall as of October 1, 1992, my last day on the premise. This total estimate of fair market value is rounded to \$4,800. I have no present or contemplated future interest in the subject property.

(Signature, title and date)

Approved:

(Signature, title and date)



State Grant Programs Part 523 Federal Aid Compliance Requirements

Chapter 1 Summary 523 FW 1.1

1.1 Purpose. The purpose of this chapter is to summarize guidance on those requirements generally applicable to grant programs.

1.2 Applicability and Scope. In accepting Federal funds, States and other grantees must comply with all applicable Federal laws, regulations, and policies. This chapter is not all-inclusive. Exclusion of any specific requirement does not relieve grantees of their responsibility for compliance. Copies of reference materials can be obtained from the Regional Offices. Guidance on the following requirements is contained in this chapter.

A. Nondiscrimination Requirements.

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Title IX of the Education Amendments of 1972

B. Environmental Requirements.

- Coastal Zone Management Act of 1972
- Executive Order 11987, Exotic Organisms
- Endangered Species Act of 1973
- National Environmental Policy Act of 1969
- Floodplains and Wetlands Protection
- Animal Welfare Act of 1985
- Coastal Barriers Resources Act of 1982

C. Historic and Cultural Preservation Requirements.

- National Historic Preservation Act of 1966

D. Administrative Requirements.

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Debarment and Suspension
- Drug-Free Workplace Act of 1988
- Restrictions on Lobbying (P.L. 101-121)

1.3 Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)).

A. Summary. Prohibits discrimination based on race, color, or national origin in any "program or activity receiving Federal financial assistance."

B. References.

- (1) Regulations of the Department of the Interior ([43 CFR Part 17](#))
- (2) [U.S. Fish and Wildlife Service Guidelines for Compliance with Federal Nondiscrimination Requirements](#)
- (3) U.S. Fish and Wildlife Service Federally Assisted Program Implementation Plan

C. Requirements.

- (1) Grantees may not, on the basis of race, color, or national origin, select, locate, or operate project facilities which will serve to exclude or limit opportunity for use or benefits.

(2) Grantees shall make reasonable efforts to inform the public of opportunities provided by Federal Aid projects and shall inform the public that the projects are subject to Title VI compliance.

(3) Though employment practices are not in themselves subject to Title VI, Title VI does apply to employment which may affect the delivery of services to beneficiaries of a federally assisted program. For the purpose of Title VI, volunteers or other unpaid persons who provide services to the public are included.

1.4 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 795)

A. Summary. Ensures that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

B. References.

(1) Regulations of the Department of the Interior ([43 CFR Part 17](#))

(2) [U.S. Fish and Wildlife Service Guidelines for Compliance with Federal Nondiscrimination Requirements](#)

(3) U.S. Fish and Wildlife Service Federally Assisted Program Implementation Plan

C. Requirements.

(1) Grantees may not deny a qualified handicapped person the opportunity to participate in or benefit from Federal Aid project facilities or services afforded to others.

(2) Grantees may not deny a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

(3) The location of facilities shall not have the effect of excluding handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any Federal Aid project.

1.5 Age Discrimination Act of 1975 (42 U.S.C. 6101)

A. Summary. Prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

B. References.

(1) Regulations of the Department of the Interior ([43 CFR Part 17](#))

(2) [U.S. Fish and Wildlife Service Guidelines for Compliance with Federal Nondiscrimination Requirements](#)

(3) U.S. Fish and Wildlife Service Federally Assisted Program Implementation Plan

C. Requirements. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. However, a grantee is permitted to take an action otherwise prohibited if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity.

1.6 Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et.seq.)

A. Summary. Prohibits discrimination on the basis of sex in any education program receiving Federal financial assistance.

B. References.

- (1) Regulations of the Department of the Interior ([43 CFR Part 17](#))
- (2) [U.S. Fish and Wildlife Service Guidelines for Compliance with Federal Nondiscrimination Requirements](#)

C. Requirements. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program receiving Federal financial assistance. For the purpose of Title IX, hunter education and aquatic education project activities are considered education programs.

1.7 Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.)

A. Summary. The Act is intended to, "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone..."

B. References. Regulations of the Department of Commerce (15 CFR 930).

C. Requirements. Federal Aid projects, which would "significantly affect the coastal zone" must be consistent with the approved State management programs developed under the Act. Prior to submitting a Grant Proposal for a project in the coastal zone of a State with an approved Coastal Zone Management Program, the proposed project must be reviewed for consistency with the management plan. Grantees may be required to submit a statement attesting to conformance with the Coastal Zone Management Plan.



1.8 Exotic Organisms Executive Order 11987

A. Summary. Federal agencies shall discourage the States from introducing exotic species into natural ecosystems of the United States. In addition, Federal agencies will restrict the use of Federal funds for the purpose of introducing exotic species into ecosystems outside of the United States.

B. References. Executive Order 11987, Exotic Organisms, 42 FR 26949 (May 25, 1977)

C. Requirements.

(1) Any proposal for the introduction of an exotic species into a natural ecosystem by a State fish and wildlife agency must include a biological opinion from the U.S. Fish and Wildlife Service supporting the proposed introduction.

(2) To obtain a biological opinion, the State agency shall provide the Regional Director with a written request for the opinion together with any available information including, but not limited to, NEPA documents, biological data, and project plans.

(3) After receiving a biological opinion, it will be the responsibility of the State agency to adhere to the recommendations outlined in that opinion.

1.9 Endangered Species Act of 1973 (16 U.S.C. 1531-1534).

A. Summary. Actions funded under the Federal Aid programs must not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of the habitat of the species.

B. Reference. Section 7 Consultation Requirements, 43 FR 870 (Jan. 4, 1978).

C. Requirements. The Regional Director must ensure that Federal Aid projects are not likely to jeopardize the continued existence of endangered or threatened species or result in the

destruction or adverse modification of critical habitat. For projects which may affect an endangered or threatened species, either beneficially or adversely, a formal Section 7 consultation is necessary. The State is required to name the listed species and/or critical habitat included; list the name, description, and location of the area; list objectives of the actions; and provide an explanation of the impacts of the actions on a listed species or its critical habitat.

1.10 National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

A. Summary. Requires that every proposed Federal action be examined to determine the effects (beneficial or adverse) it will have on the human environment and that the findings be considered in decisions regarding its implementation.

B. References.

- (1) Regulations of the Council on Environmental Quality implementing the procedural provisions of NEPA, (40 CFR 1500-1508).
- (2) Departmental Manual, Environmental Quality, Part 516.
- (3) Fish and Wildlife Service Manual, National Environmental Policy Act, Part 550.
- (4) [National Environmental Policy Act Handbook for Federal Aid Projects](#). The Assistant Director-Fish and Wildlife Enhancement is authorized to promulgate the National Environmental Policy Act Handbook for Federal Aid Projects.

C. Requirements. Each action proposed for Federal funding must include an Environmental Assessment (EA), Environmental Impact Statement (EIS), or show that the proposed activity is covered by one or more categorical exclusions. For specific requirements and procedures, see National Environmental Policy Act (NEPA) Handbook for Federal Aid Projects.

1.11 Floodplains and Wetlands Protection.

A. Summary. Federal Aid funds may not be used for projects affecting floodplains or wetlands unless there is no practical alternative outside the floodplain or wetland and only if actions are taken to minimize the adverse effects.

B. References.

- (1) [Executive Order 11988, Floodplain Management](#), 42 FR 26951 (May 25, 1977).
- (2) [Executive Order 11990, Protection of Wetlands](#), 42 FR 26961 (May 25, 1977).
- (3) Department of Interior Procedures for Implementation, 520 DM 1.
- (4) Natural Resources Protection, 613 FW.

C. Requirements. The Executive orders on floodplains and wetlands require Federal agencies to review proposed actions to ensure that there are no practical alternatives outside the floodplain or wetland, and to ensure that potential harm is minimized. If there are no practical alternatives to proposed projects in floodplains or wetlands, actions to minimize the adverse effects should be incorporated into the project plans.

1.12 [Animal Welfare Act of 1985](#) 7 U.S.C. 2131, et seq.

A. Summary. Requires the humane treatment of animals (exclusive of fish) used in research, experimentation, testing, and teaching.

B. References. Regulations of the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), 9 CFR Parts 1, 2 and 3 (54 FR 36112 (Aug. 31, 1989)).

C. Requirements. Grantees who use Federal Aid funds to conduct covered management or research or who engage in interstate shipment of animals should contact the local Animal and Plant Health Inspection Service (APHIS) office for instructions. A list of the APHIS offices may be obtained from the Regional Offices.

1.13 Coastal Barriers Resources Act of 1982 (16 U.S.C. 3501), as amended by the Coastal Barrier Improvement Act of 1990 (P.L. 101-591)

A. Summary. The purpose of the Acts are "...to minimize the loss of human life, wasteful expenditure of Federal revenues and damage to fish and wildlife, and other natural resources associated with coastal barriers..."

B. References. U.S. Fish and Wildlife Service Advisory Guidelines, 48 FR 45664 (Oct. 6, 1983).

C. Requirements. Activities conducted within a unit of the Coastal Barrier Resources System must meet the requirements of section 6 of the Act. Section 6 requires consultation with the Service, via the appropriate Regional Office.

1.14 National Historic Preservation Act of 1966 16 U.S.C. 470.

A. Summary. Federal agencies may not approve any grant unless the project is in accordance with national policies relating to the preservation of historical and cultural properties and resources.

B. References.

- (1) National Register of Historic Places (36 CFR 60).
- (2) The Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469a.
- (3) Procedures for the Protection of Historic and Cultural Properties (36 CFR 800).
- (4) Determinations of Eligibility for Inclusion in the National Register of Historic Places (36 CFR 63).
- (5) Criteria for Comprehensive Statewide Historic Surveys and Plans (36 CFR 61).
- (6) Cultural Resources Protection, 614 FW.

C. Requirements.

(1) States must consult with the State Historic Preservation Officer (SHPO) for those activities or projects that are defined as undertakings under the National Historic Preservation Act. An undertaking is defined as a project, activity, or program that can result in changes in the character or use of properties that are listed on or potentially eligible for listing on the National Register of Historic Places (National Register) and located within the project's area of potential effect. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106 of the National Historic Preservation Act.

(2) In cases where a Federal Aid project has been determined to be an undertaking, the State must notify the appropriate Service Regional Director for guidance on how to proceed with Section 106 compliance. Based on the results of the consultation between the State and SHPO, the Service will determine the need and level of inventory to identify historic properties that may be affected by the undertaking and to gather sufficient information to evaluate whether these properties are listed or are eligible for listing in the National Register.

(3) Where completed inventories indicate that identified historic properties may be affected by the undertaking, the State shall be responsible for submitting the necessary documentation to the appropriate Regional Director for review. As necessary, the Service shall seek

determinations of eligibility for those properties that are to be affected by the proposed activity. (4) If a State is advised by the SHPO that an undertaking will adversely affect a property that is eligible for or listed on the National Register, the State shall ask the appropriate Regional Director to determine measures for mitigating or avoiding impacts. This may require the development of a memorandum of agreement among the Service, State, and State Historic Preservation Officer to address specific measures that will be employed to avoid or minimize adverse effects to historic properties located within the area of potential effect. Adverse effects that may diminish the character and integrity of historic properties include

- (a) Physical destruction, damage, or alteration of all or part of the property;
- (b) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register of Historic Places;
- (c) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
- (d) Neglect of a property resulting in its deterioration or destruction; and
- (e) Transfer, lease, or sale of the historic property.

(5) If a previously unknown property that is eligible for listing on the National Register is discovered at any time during the implementation period of a Federal Aid project, the Regional Director must be notified and all actions which may adversely effect it must be suspended. The Service shall provide the State with instructions on how to proceed.

1.15 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601)

A. Summary. Federal agencies may not approve any grant unless the grantee provides Assurances that it will comply with the Act. Prices to be paid for lands or interests in lands must be fair and reasonable (except when the price is fixed by law, or when the lands are to be acquired at public auction or by condemnation and the value determined by the court). Persons displaced from their homes, businesses, and farms must receive relocation services, compensation, and fair equitable treatment.

B. References.

- (1) Department of Interior Uniform Relocation Assistance and Real Property Acquisition Regulations (41 CFR 114-50).
- (2) Department of Transportation Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24).

C. Appraisal Requirements.

- (1) A real property owner or his designated representative must be contacted prior to making an appraisal and given an opportunity to accompany the appraiser during inspection of the property. The fact that it occurred must be documented in project files and in the appraisal report.
- (2) Real property must be appraised, the appraisal report reviewed, and the fair market value established prior to initiation of negotiations with the owner.
- (3) If the acquisition of only part of a property will leave the owner with an uneconomic remnant, the State or other grantee must offer to buy the whole property. The term "uneconomic remnant" applies only to Title III of the Act and the necessity of the acquiring agency to offer to purchase such a remainder or the entire property. It is not to be construed with the term "uneconomic unit" as it applies to the in-lieu payment of farm operations under Title II of the Act.

D. Negotiation Requirements.

(1) An owner or his designated representative must be provided, in person or by certified mail, a written statement of just compensation as determined in the appraisal process. Offers of compensation cannot be less than the approved appraisal of fair market value of such property. If only a portion of the owner's property is being taken and the owner is left with an uneconomic remnant, the agency must offer to buy the whole property.

(2) Reimbursement to a real property owner for costs to convey a title must include

- (a) Recording fees, transfer taxes, and similar costs;
- (b) Penalty cost for prepayment of pre-existing recorded mortgage; and
- (c) Pro-rata portion of real property taxes allocable to a period subsequent to the date of vesting title.

(3) All displaced persons (owners and tenants) must be provided information on their relocation benefits.

E. Relocation Assistance to Displaced People.

(1) A relocation plan must be prepared for displaced persons so that problems associated with displacement of individuals, families, businesses, farms and nonprofit organizations are known at an early stage in a project's development (see 49 CFR 24.205). Planning may involve the following

(a) Who and what will be displaced.

(b) The estimated number of dwellings, businesses, farms, and nonprofit organizations displaced, including rentals. This estimate should contain

- (i) Currently available replacement housing, businesses, farm, and organization sites;
- (ii) Approximate number of employees affected;
- (iii) Types of buildings, number, and size of rooms;
- (iv) The needs of those displaced (i.e. lifestyle); and
- (v) Type of neighborhood, distance to community facilities, church, etc.

(c) List of comparable replacement dwellings, including rentals, available on the market within a 50-mile radius (specialized units may require expanding radius). When an adequate supply of comparable housing is not expected to be available, consideration of Housing of the Last Resort actions should be instituted.

(d) Estimate of cost of replacement housing by purchase and/or rental per displaced person, and consideration of special needs like the elderly or handicapped.

(e) Estimate of cost for moving.

(2) Advisory Services for Displaced People. Advisory services must be provided for all persons occupying property to be acquired and for all persons who use such real property for a business or farm operation. Eligibility requirements and corresponding benefits must be explained to all displaced persons. Assistance must be provided to persons completing claim forms, obtaining moving services, and obtaining proper housing.

(3) Payment for Relocation of Displaced Persons. Relocation expenses must be paid to a displaced person who purchases and occupies a replacement dwelling. Moving and related expenses will be provided to displaced persons residing on real property including those persons owning a business or a farm. All payments must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

1.16 Debarment and Suspension

A. Summary. Executive Order 12549, Debarment and Suspension, directs that persons debarred or suspended by one Federal agency from receiving grants may not receive grants from any Federal agency.

B. References.

- (1) Executive Order 12549, Debarment and Suspension, Feb. 18, 1986.
- (2) Department of Interior Rules, Governmentwide Debarment and Suspension (Nonprocurement), [43 CFR 12.100 - 12.510](#)

C. Requirements.

- (1) States and other grantees must submit the certification for Primary Covered Transactions (DI-1953). States certify as to their "principals", not the State agency. State principals are commissioners, directors, project leaders, or other persons with primary management or supervisory responsibilities, or a person who has a critical influence on or substantial control over Federal Aid projects. States may provide the certification annually. Other grantees must provide the certification with each Application for Federal Assistance.
- (2) States and other grantees must obtain from their subgrantees and contractors a certification for Lower Tier Covered Transactions (DI-1954). A certification is not required for small purchase procurements, currently defined as less than \$25,000. These certifications are normally provided with an application or proposal from a subgrantee or contractor.
- (3) States and other grantees must not make any award, either by subgrant or contract, to any party which is debarred or suspended or is otherwise ineligible under provisions of Executive Order 12549. The U.S. General Services Administration maintains a list of parties debarred, suspended, ineligible or excluded from participation in Federal grants under the provision of the Executive order. A copy of this list is available, upon request, from the Regional Director.

1.17 Drug-Free Workplace Act of 1988.

A. Summary. The Drug-Free Workplace Act requires that all grantees certify that they will maintain a drug-free workplace.

B. References. Department of Interior Rules, Drug-Free Workplace Requirements, [43 CFR 12.600-635](#).

C. Requirements. Grantee organizations must

- (1) Establish (and publish) a policy that informs employees that the manufacture, distribution, possession, or use of a controlled substance in the workplace is prohibited;
- (2) Establish an awareness program to inform employees of the dangers of drug abuse in the workplace; and
- (3) Provide a drug-free workplace certification to the Department of Interior or U.S. Fish and Wildlife Service. The forms for providing the certification are available from the Regional Director. State agencies may certify annually. If the State agency is covered by a consolidated certification for all State agencies, a copy of the consolidated certification should be submitted to the Regional Director. (The original is retained by the State.) Grantees other than State agencies must submit the certification with each Grant Agreement.

1.18 Restrictions on Lobbying (P.L. 101-121)

A. Summary. Prohibits the use of Federal appropriated funds for lobbying either the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement.

B. References. Department of the Interior Rules, 43 CFR Part 18, New Restrictions on Lobbying.

C. Requirements.

(1) Recipients of Federal grants are prohibited from using Federal appropriated funds, e.g. grants, to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, or an employee of a member of Congress in connection with a specific contract, grant, loan, or cooperative agreement.

(2) Proposals for grants in excess of \$100,000 must contain a certification that no part of the funds requested will be used for lobbying. Copies of the certification form, Form DI-1963, can be obtained from the Regional Offices.

(3) Recipients of grants in excess of \$100,000 must file a disclosure form on lobbying activities conducted with other than Federal appropriated funds. Form SF-LLL and SF-LLL-A, Continuation Sheet, shall be used for this purpose. Copies of the forms can be obtained from the Regional Offices.

Executive Order 11988
Floodplain Management
42 Fed. Reg. 26951 (Issued 5/24/77)

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the [Flood Disaster Protection Act of 1973](#) (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Section 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)

(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of [Executive Order No. 11514](#), as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the [National Environmental Policy Act of 1969](#), as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Section 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Section 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the [Flood Disaster Protection Act of 1973](#), as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Section 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Section 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Section 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Section 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Section 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104 (h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the [National Environmental Policy Act of 1969](#), as amended.

The White House, President Carter
May 24, 1977

Executive Order 11990
Protection of Wetlands
No. 11990, 42 Fed. Reg. 26961 (Issued 5/24/77)

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Section 2.

(a) In furtherance of Section 101(b)(3) of the [National Environmental Policy Act of 1969](#) (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102 (2) (C) of the [National Environmental Policy Act of 1969](#), as amended.

Section 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Section 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Section 5. In carrying out the activities described in Section I of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands.

Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Section 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized fulfill the requirements of this Order. Sec. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section I which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Section 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Section 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat, 148, 42 U.S.C. 5145 and 5146).

Section 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the [National Environmental Policy Act of 1969](#), as amended.

The White House, President Carter
May 24, 1977



EXECUTIVE ORDER 13112 INVASIVE SPECIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. Definitions.

- (a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
- (b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.
- (c) "Ecosystem" means the complex of a community of organisms and its environment.
- (d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.
- (e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.
- (f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.
- (g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.
- (h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.
- (i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.
- (j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Section 2. Federal Agency Duties.

- (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,
 - (1) identify such actions;
 - (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that

have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Section 3. Invasive Species Council.

(a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Section 4. Duties of the Invasive Species Council.

The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal

agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Section 5. Invasive Species Management Plan.

(a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Section 6. Judicial Review and Administration.

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

The White House, William J. Clinton

February 3, 1999.

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2. WILDLIFE RESTORATION

Wildlife-Restoration Projects Assistance

PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT

[As Amended Through P.L. 106–580, Dec. 29, 2000]

AN ACT To provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture¹ is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth; but no money apportioned under this Act to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this Act and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the Governor of the State shall be sufficient. The Secretary of Agriculture¹ and the State fish and game department of each State accepting the benefits of this Act shall agree upon the wildlife-restoration projects to be aided in such State under the terms of this Act and all projects shall conform to the standards fixed by the Secretary of Agriculture.¹

(16 U.S.C. 669)

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term “conservation” means the use of methods and procedures necessary or desirable to sustain healthy populations of wildlife, including all activities associated with scientific resources management such as research, census, monitoring of populations, acquisition, improvement and management of habitat, live trapping and transplantation, wildlife damage management, and periodic or total protection of a species or population, as well as the taking of individuals within wildlife stock or population if permitted by applicable State and Federal law;

¹ Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

(2) the term “Secretary” means the Secretary of the Interior;

(3) the term “State fish and game department” or “State fish and wildlife department” means any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department or State fish and wildlife department.

(4) the term “wildlife” means any species of wild, free-ranging fauna including fish, and also fauna in captive breeding programs the object of which is to reintroduce individuals of a depleted indigenous species into previously occupied range;

(5) the term “wildlife-associated recreation” means projects intended to meet the demand for outdoor activities associated with wildlife including, but not limited to, hunting and fishing, wildlife observation and photography, such projects as construction or restoration of wildlife viewing areas, observation towers, blinds, platforms, land and water trails, water access, field trialing, trail heads, and access for such projects;

(6) the term “wildlife conservation and restoration program” means a program developed by a State fish and wildlife department and approved by the Secretary under section 304(d), the projects that constitute such a program, which may be implemented in whole or part through grants and contracts by a State to other State, Federal, or local agencies (including those that gather, evaluate, and disseminate information on wildlife and their habitats), wildlife conservation organizations, and outdoor recreation and conservation education entities from funds apportioned under this title, and maintenance of such projects;

(7) the term “wildlife conservation education” means projects, including public outreach, intended to foster responsible natural resource stewardship; and

(8) the term “wildlife-restoration project” includes the wildlife conservation and restoration program and means the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects.

(16 U.S.C. 669a)

SEC. 3. (a)(1) An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of the Internal Revenue Code of 1986 (26 U.S.C. 4161(b), 4181) shall, subject to the exemptions in section 4182 of such Code, be covered into the Federal aid to wildlife restoration fund in the Treasury (herein-

after referred to as the “fund”) and is authorized to be appropriated and made available until expended to carry out the purposes of this Act. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of Agriculture in carrying out the provisions of the Migratory Bird Conservation Act.

(2)¹ There is established in the Federal aid to wildlife restoration fund a subaccount to be known as the “Wildlife Conservation and Restoration Account”. There are authorized to be appropriated for the purposes of the Wildlife Conservation and Restoration Account \$50,000,000 in fiscal year 2001 for apportionment in accordance with this Act to carry out State wildlife conservation and restoration programs. Further, interest on amounts transferred shall be treated in a manner consistent with 16 U.S.C. 669(b)(1)).

(b)(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in his judgment, required for meeting a current year’s withdrawals. For purposes of such investment, the Secretary of the Treasury may—

(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

(B) sell obligations held in the fund at the market price.

(2) The interest on obligations held in the fund—

(A) shall be credited to the fund;

(B) constitute the sums available for allocation by the Secretary under section 8 of the North American Wetlands Conservation Act; and

(C) shall become available for apportionment under this Act at the beginning of fiscal year 2006.

(c)(1) Amounts transferred to the Wildlife Conservation and Restoration Account shall supplement, but not replace, existing funds available to the States from the sport fish restoration account and wildlife restoration account and shall be used for the development, revision, and implementation of wildlife conservation and restoration programs and should be used to address the unmet needs for a diverse array of wildlife and associated habitats, including species that are not hunted or fished, for wildlife conservation, wildlife conservation education, and wildlife-associated recreation projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.

(2) Funds may be used by a State or an Indian tribe for the planning and implementation of its wildlife conservation and restoration program and wildlife conservation strategy, as provided in sections 4(d) and (e) of this Act, including wildlife conservation, wildlife conservation education, and wildlife-associated recreation

¹ Margin so in law.

projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.

(3) Priority for funding from the Wildlife Conservation and Restoration Account shall be for those species with the greatest conservation need as defined by the State wildlife conservation and restoration program.

(d) Notwithstanding subsections (a) and (b) of this section, with respect to amounts transferred to the Wildlife Conservation and Restoration Account, so much of such amounts apportioned to any State for any fiscal year as remains unexpended at the close thereof shall remain available for obligation in that State until the close of the second succeeding fiscal year.

(16 U.S.C. 669b)

SEC. 4. ALLOCATION AND APPORTIONMENT OF AVAILABLE AMOUNTS.

(a) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the revenues (excluding interest accruing under section 3(b)) covered into the fund for the fiscal year, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for each of fiscal years 2001 and 2002, \$9,000,000;

(ii) for fiscal year 2003, \$8,212,000; and

(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—
(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available

under this Act are apportioned among the States for the fiscal year.

(b) APPORTIONMENT TO STATES.—The Secretary of the Interior, after deducting the available amount under subsection (a), the amount apportioned under subsection (c), any amount apportioned under section 8A, and amounts provided as grants under sections 10 and 11, shall apportion the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this Act shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

(c) One-half of the revenues accruing to the fund under this Act each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: *Provided*, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues and Guam, the Virgin Islands, American Samoa, Puerto Rico, and the Northern Mariana Islands shall each be apportioned one-sixth of 1 per centum of such revenues. For the purpose of this subsection, population shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce.

(c)¹ APPORTIONMENT OF WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

(1) The Secretary of the Interior shall make the following apportionment from the Wildlife Conservation and Restoration Account:

(A) to the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof.

(B) to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof.

(2)(A) The Secretary of the Interior, after making the apportionment under paragraph (1), shall apportion the remaining amount in the Wildlife Conservation and Restoration Account for each fiscal year among the States in the following manner:

¹ The second subsection (c) and (d) were added by section 902(e) of H.R. 5548, as introduced in the 106th Congress and enacted into law by section 1(a)(2) of Public Law 106-553.

(i) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and

(ii) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States.

(B) The amounts apportioned under this paragraph shall be adjusted equitably so that no such State shall be apportioned a sum which is less than one percent of the amount available for apportionment under this paragraph for any fiscal year or more than five percent of such amount.

(3) Of the amounts transferred to the Wildlife Conservation and Restoration Account, not to exceed 3 percent shall be available for any Federal expenses incurred in the administration and execution of programs carried out with such amounts.

(d) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

(1) Any State, through its fish and wildlife department, may apply to the Secretary of the Interior for approval of a wildlife conservation and restoration program, or for funds from the Wildlife Conservation and Restoration Account, to develop a program. To apply, a State shall submit a comprehensive plan that includes—

(A) provisions vesting in the fish and wildlife department of the State overall responsibility and accountability for the program;

(B) provisions for the development and implementation of—

(i) wildlife conservation projects that expand and support existing wildlife programs, giving appropriate consideration to all wildlife;

(ii) wildlife-associated recreation projects; and

(iii) wildlife conservation education projects pursuant to programs under section 8(a); and

(C) provisions to ensure public participation in the development, revision, and implementation of projects and programs required under this paragraph.

(D) WILDLIFE CONSERVATION STRATEGY.—Within five years of the date of the initial apportionment, develop and begin implementation of a wildlife conservation strategy based upon the best available and appropriate scientific information and data that—

(i) uses such information on the distribution and abundance of species of wildlife, including low population and declining species as the State fish and wildlife department deems appropriate, that are indicative of the diversity and health of wildlife of the State;

(ii) identifies the extent and condition of wildlife habitats and community types essential to conservation of species identified under paragraph (1);

(iii) identifies the problems which may adversely affect the species identified under paragraph (1) or their habitats, and provides for priority research and surveys to identify factors which may assist in restora-

tion and more effective conservation of such species and their habitats;

(iv) determines those actions which should be taken to conserve the species identified under paragraph (1) and their habitats and establishes priorities for implementing such conservation actions;

(v) provides for periodic monitoring of species identified under paragraph (1) and their habitats and the effectiveness of the conservation actions determined under paragraph (4), and for adapting conservation actions as appropriate to respond to new information or changing conditions;

(vi) provides for the review of the State wildlife conservation strategy and, if appropriate, revision at intervals of not more than ten years;

(vii) provides for coordination to the extent feasible the State fish and wildlife department, during the development, implementation, review, and revision of the wildlife conservation strategy, with Federal, State, and local agencies and Indian tribes that manage significant areas of land or water within the State, or administer programs that significantly affect the conservation of species identified under paragraph (1) or their habitats.

(2) A State shall provide an opportunity for public participation in the development of the comprehensive plan required under paragraph (1).

(3) If the Secretary finds that the comprehensive plan submitted by a State complies with paragraph (1), the Secretary shall approve the wildlife conservation and restoration program of the State and set aside from the apportionment to the State made pursuant to subsection (c) an amount that shall not exceed 75 percent of the estimated cost of developing and implementing the program.

(4)(A) Except as provided in subparagraph (B), after the Secretary approves a State's wildlife conservation and restoration program, the Secretary may make payments on a project that is a segment of the State's wildlife conservation and restoration program as the project progresses. Such payments, including previous payments on the project, if any, shall not be more than the United States pro rata share of such project. The Secretary, under such regulations as he may prescribe, may advance funds representing the United States pro rata share of a project that is a segment of a wildlife conservation and restoration program, including funds to develop such program.

(B) Not more than 10 percent of the amounts apportioned to each State under this section for a State's wildlife conservation and restoration program may be used for wildlife-associated recreation.

(5) For purposes of this subsection, the term "State" shall include the District of Columbia, the Commonwealth of Puerto

Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(16 U.S.C. 669c)

SEC. 5. For each fiscal year, the Secretary of the Interior shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury and to each State fish and game department the sum which he has estimated to be deducted for administering this Act and the Migratory Bird Conservation Act and the sum which he has apportioned to each State. Any State desiring to avail itself of the benefits of this Act shall notify the Secretary of the Interior to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the Secretary of the Interior as herein provided is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

(16 U.S.C. 669d)

SEC. 6. (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for wildlife restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this Act upon this approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any wildlife-restoration project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said fund as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be ap-

plied only to such approved comprehensive wildlife plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act. No payment of any money apportioned under this Act shall be made on any comprehensive wildlife plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purposes of this Act as a wildlife program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund established by section 3 of this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

(16 U.S.C. 669e)

SEC. 7. (a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to wildlife, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with rules and regulations made pursuant to this Act. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of the Interior against the said fund to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

(16 U.S.C. 669f)

SEC. 8. (a) Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the State in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 2 of this Act, shall include maintenance of completed projects. Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources. Funds from the Wildlife Conservation and Restoration Account may be used for a wildlife conservation education program, except that no such funds may be used for education efforts, projects, or programs that promote or encourage opposition to the regulated taking of wildlife.

(b) Each State may use the funds apportioned to it under section 4(c) to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

(16 U.S.C. 669g)

SEC. 8A. The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 2 of this Act, and hunter safety programs as provided by section 8(b) of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of the money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of one per centum, and for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

(16 U.S.C. 669g-1)

SEC. 9. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(a)(1) only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6, 10, or 11;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration

of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6, 10, and 11.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under section 4(a)(1) should be used for an expense for administration other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than \$25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the

time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

(16 U.S.C. 669h)

SEC. 10. FIREARM AND BOW HUNTER EDUCATION AND SAFETY PROGRAM GRANTS.

(a) IN GENERAL.—

(1) GRANTS.—Of the revenues covered into the fund, \$7,500,000 for each of fiscal years 2001 and 2002, and \$8,000,000 for fiscal year 2003 and each fiscal year thereafter, shall be apportioned among the States in the manner specified in section 4(c) by the Secretary of the Interior and used to make grants to the States to be used for—

(A) in the case of a State that has not used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b)—

(i) the enhancement of hunter education programs, hunter and sporting firearm safety programs, and hunter development programs;

(ii) the enhancement of interstate coordination and development of hunter education and shooting range programs;

(iii) the enhancement of bow hunter and archery education, safety, and development programs; and

(iv) the enhancement of construction or development of firearm shooting ranges and archery ranges, and the updating of safety features of firearm shooting ranges and archery ranges; and

(B) in the case of a State that has used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b), any use authorized by this Act (including hunter safety programs and the construction, operation, and maintenance of public target ranges).

(2) LIMITATION ON USE.—Under paragraph (1), a State shall not be required to use more than the amount described in section 8(b) for hunter safety programs and the construction, operation, and maintenance of public target ranges.

(b) COST SHARING.—The Federal share of the cost of any activity carried out with a grant under this section shall not exceed 75 percent of the total cost of the activity.

(c) PERIOD OF AVAILABILITY; REAPPORTIONMENT.—

(1) PERIOD OF AVAILABILITY.—Amounts made available and apportioned for grants under this section shall remain available only for the fiscal year for which the amounts are apportioned.

(2) REAPPORTIONMENT.—At the end of the period of availability under paragraph (1), the Secretary of the Interior shall apportion amounts made available that have not been used to make grants under this section among the States described in subsection (a)(1)(B) for use by those States in accordance with this Act.

(16 U.S.C. 669h-1)

SEC. 11. MULTISTATE CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Not more than \$3,000,000 of the revenues covered into the fund for a fiscal year shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in section 4(b) for use by the States in the same manner as funds apportioned under section 4(b).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of wildlife restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of wildlife restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated hunting or trapping of wildlife; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated hunting or trapping of wildlife.

(e) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

(16 U.S.C. 669h–2)

SEC. 12. The Secretary of Agriculture¹ is authorized to make rules and regulations for carrying out the provisions of this Act.

(16 U.S.C. 669i)

SEC. 13. SHORT TITLE.

This Act may be cited as the “Pittman-Robertson Wildlife Restoration Act”.

(16 U.S.C. 669 note)

¹ Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

Permanent Appropriation

ACT OF SEPTEMBER 6, 1950

(Chapter 896; 64 Stat. 595)

AN ACT Making appropriations for the support of the Government for the fiscal year ending June 30, 1951, and for other purposes.

* * * * *

CHAPTER VII—DEPARTMENT OF THE INTERIOR

TITLE I

* * * * *

FISH AND WILDLIFE SERVICE

* * * * *

FEDERAL AID IN WILDLIFE RESTORTATION

For carrying out the provisions of the Act of September 2, 1937, as amended (16 U.S.C. 669–669j), amounts equal to the sums credited during the next preceding fiscal year and each fiscal year thereafter to the special fund created by said Act.

* * * * *

This chapter may be cited as the “Interior Department Appropriation Act, 1951”.

* * * * *

U.S. Fish & Wildlife Service

NEPA

Guidance to States Participating in The Federal Aid Program



Acknowledgments

This publication updates the guidance provided in: *NEPA In Federal Aid Proposals—Guidance to the States* which was published by the Fish and Wildlife Service in 1980. The publication of this document was guided by a task force appointed by the Assistant Regional Directors – Federal Aid that consisted of regional Federal Aid staff specialists having extensive experience in applying NEPA. We would like to extend our appreciation to task force members Jerry Novotny, Pat Mullane, Dave Pederson, Torre Anderson, Bill Jones and Dave Watsjold for their assistance, advice, support and coordination of Federal Aid staff and state review. Task force chairperson, Vaughn Douglass, consolidated material from a variety of sources and edited the manuscript. Carlos Diaz and Jacquie Richy also provided invaluable information concerning organization and process. Bill Archambault and Don Peterson reviewed the document to ensure consistency with pertinent CEQ regulations, Department procedures and Service guidance. Kris LaMontagne is thanked for his guidance and assistance in ensuring the purpose of this document was maintained. Finally we are indebted to Dee Mazzaresse for her invaluable editorial suggestions and generous assistance in organizing and assembling this publication. Maggie Haddad graciously performed graphics and layout services.

Photo front cover:

Construction of a boardwalk at the Aquatic Resource Education Center, Smyrna, DE
Lacy Nichols, Jr./Delaware Division of Fish and Wildlife

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Introduction

The Federal Aid in Sport Fish and Wildlife Restoration (Federal Aid) grant program is a partnership between the U. S. Fish and Wildlife Service and State natural resource agencies. The program is funded primarily by excise taxes on firearms, ammunition, archery equipment, fishing tackle, and motorboat fuels. State agencies submit proposals for projects that address the fish and wildlife management priorities and needs of their particular State. The U.S. Fish and Wildlife Service Division of Federal Aid works with the State agency to ensure that projects conform with regulations for various grant programs and environmental legislation such as the National Environmental Policy Act of 1969 (NEPA).

This supplement to the Federal Aid Handbook (521–523 FW) is designed for use by both State personnel and Federal Aid staff. Approval of a Federal Aid project constitutes a Federal action that requires compliance with pertinent Federal laws and regulations. To comply with NEPA, every proposed Federal Aid project must be reviewed prior to approval to determine the effects of the proposed work upon the environment. While States are encouraged to assist in the NEPA process, Federal Aid cannot delegate its NEPA decision-making responsibilities to State fish and wildlife agencies.

The States have an important role to describe the purpose and need for the proposed action, the alternatives to be considered, and the potential environmental consequences. States are also able to identify and notify interested publics and affected agencies for early public involvement. Therefore, although the Fish and Wildlife Service is ultimately responsible for NEPA compliance, the States work in close coordination with Federal Aid to ensure that NEPA procedural and information needs are met.

Purpose and Scope

Two important objectives of the National Environmental Policy Act, as stated in the preamble, are:

- To carefully consider detailed information concerning every significant environmental impact on the human environment, which is defined as the natural and physical environment and the relationship of people to the environment.
- To ensure the public plays a role in both the decision-making process and the implementation of that decision.

These objectives require that all proposed Federal actions be critically examined with public input to determine the effects such actions will have upon the environment. The NEPA process provides a mechanism to identify and assess reasonable and prudent alternatives to a proposed action, the impacts of such alternatives, and appropriate mitigation measures. NEPA procedures also ensure that essential environmental information is available to public officials and citizens.

The President's Council on Environmental Quality (CEQ) updated regulations implementing NEPA in 1987. These regulations clarified NEPA's purposes and specified basic governmental procedures for implementation. The CEQ Regulations are found in the Code of Federal Regulations, at 40 CFR Parts 1500-1508. NEPA procedures were subsequently issued by the Department of the Interior (516 DM 1-7), followed by NEPA guidance prepared by the U.S. Fish and Wildlife Service (550 FW 1-3) to further supplement and clarify the above-mentioned information. The Service NEPA guidance addresses NEPA implementation for Federal Aid and the rest of its programs. This supplement is consistent with these regulations and procedures.

The NEPA process should serve as a focal point to facilitate compliance with other environmental statutes. To the extent practical, all environmental requirements should be processed concurrently with NEPA. In this way, environmental information developed by planning processes for the Executive Orders on Floodplains and Wetlands, Section 7 of the Endangered Species Act, the National Historic Preservation Act and other requirements can be disclosed to the public and fully incorporated in the overall decision-making process. Simultaneous processing of environmental requirements will allow early and mid course corrections in the decision-making process thus avoiding delays and increased administrative costs.

The purpose of this supplement is to assist the user in (1) determining the appropriate type of NEPA process to employ and (2) preparation of the associated documentation. This supplement focuses primarily on processes and documentation involving categorical exclusions (CX) and environmental assessments (EA). Regional Environmental Coordinators, [agency guidance on internal NEPA procedures](#), and the CEQ regulations implementing NEPA

“The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. The Act ensures that environmental information is available to public officials and citizens before decisions are made and before actions are taken.”

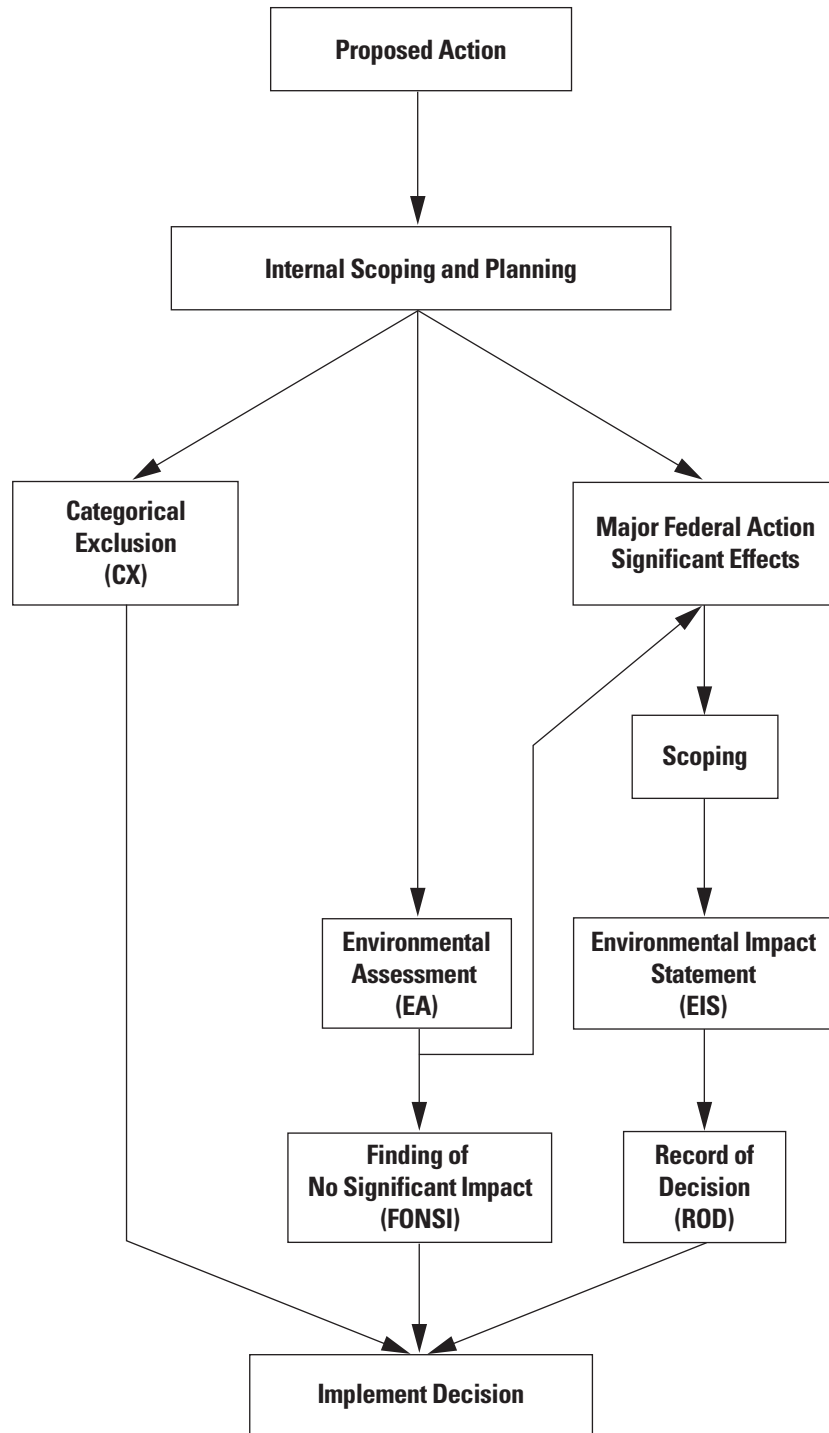
—from Part 1500 of the Code of Federal Regulations

should be consulted if preparation of an environmental impact statement (EIS) is required. The Regional Environmental Coordinator, located in each Service Regional Office, is available to provide assistance to the States and Federal Aid staff regarding all NEPA compliance matters. States may acquire assistance from their respective Regional Environmental Coordinator through a Federal Aid staff specialist.

This supplemental guidance is suggested to aid compliance with the Department/Service procedures/guidance and CEQ regulations. It does not in any way replace or supercede the Departmental/ Service procedures/guidance or CEQ regulations. If any issues arise in the interpretation of this supplemental guidance, Departmental/Service procedures/guidance and CEQ regulations, as appropriate, have precedence.

Overview of the NEPA Process and Documentation

NEPA Process



Overview of the NEPA Process and Documentation

The decision by Federal Aid to fund or approve a grant proposal is considered a Federal action. If the action will have no significant effect on the environment and is covered by a categorical exclusion, further analysis under NEPA is not required and the action is implemented. Alternatively, if the action is not covered by a categorical exclusion, or if the impacts of the action are uncertain, an EA is required to establish whether or not to prepare an EIS. Finally, if the action will have a significant impact on the environment, an EIS is required.

Categorical exclusions are classes of actions which **do not** individually or cumulatively have a significant effect on the quality of the human environment. Therefore, they **do not** normally require the preparation of an EA or EIS. Department of the Interior actions, including those of the Fish and Wildlife Service, that are designated as categorical exclusions are identified in Appendices A and B, respectively. It is critical to note that the categorical exclusions have qualifying criteria which limit their use. In addition, exceptions to categorical exclusions are certain factors that cause an action which is otherwise categorically excluded to require the preparation of an EA or EIS. Exceptions to categorical exclusions are identified in Appendix C. The decision that an activity is a categorical exclusion can be documented with a NEPA compliance checklist, Appendix G, or an Environmental Action Statement (EAS), Appendix D.

If an action is not categorically excluded, an EA must be prepared to discuss alternative actions considered to meet the identified needs of the grant, and to examine the effects of alternative actions with sufficient evidence and analysis to determine whether to prepare an EIS. A decision not to prepare an EIS is documented with a Finding of No Significant Impact (FONSI) as in Appendix E.

An EIS is a detailed, written statement prepared for major Federal actions significantly affecting the quality of the human environment. While an EA and EIS follow the same format, the EIS is much more rigorous in content and analysis of impacts, and more strictly bound by public review procedures. The decision resulting from preparing an EIS is documented in a Record of Decision (ROD).

Project Planning, Public Involvement and NEPA

Development of the grant proposal is an early planning activity that precedes initiation of the NEPA process. Before a determination can be made whether an action: (1) is categorically excluded, (2) requires the preparation of an EIS, or (3) requires an EA, the grant proposal or proposed action must be developed. The proposed action is described in the project statement of the grant. The project statement identifies specific actions to be taken and decisions to be made. The actions should be quantified (e.g., location and size of facilities to be built; acres to be harvested; location, species and number of fish to be stocked; etc.) to the extent possible. When developed, the grant proposal or specific activities therein will serve as the proposed action for consideration in the NEPA process.

Traditional Grants

NEPA documents prepared by the State (checklists, EA) should precede or accompany, a grant proposal when it is formally submitted to Federal Aid for approval. A sufficient amount of lead time prior to the requested grant start-up date should be provided to allow for a NEPA determination by Federal Aid, and if required, public review and completion of the NEPA documentation process. When an existing Federal Aid grant is renewed, the existing NEPA document should be reviewed to ensure that it adequately covers the work to be undertaken in the renewed grant. The appropriate NEPA documents or an administrative record should be prepared to confirm this review. New work added to an existing grant should be handled similarly. The existing NEPA documentation should be supplemented if the work is not adequately covered.

Grant agreements cannot be approved until all NEPA compliance activities have been completed. However, there may be instances, such as with consolidated grants or a comprehensive statewide development project, when sufficient information or detail may not be available with the grant proposal (e.g., site locations, or site-specific impacts) to make a NEPA determination. In such cases, NEPA documentation for specific, individually identified activities may be deferred to subsequent grant agreements within the grant period, when suitable information is available to complete NEPA compliance requirements.

Program Funding Option Grants

States receiving apportioned funds under the Program Funding Option (PFO) instead of traditional grants must also provide for NEPA compliance. Under the PFO, the obligation and expenditure of Federal Aid funds is supported by a system for planning, programming, budgeting, implementing, and evaluating work—a comprehensive management system. The comprehensive management system must include steps to evaluate the environmental impacts of proposed projects, and provide Federal Aid with recommendations for a NEPA decision. NEPA compliance for PFO grants is usually addressed in conjunction with preparation of documentation for the annual grant agreement, similar to traditional grants. This is due to the large number of State projects normally included in a PFO grant, and the fact that many State projects under these grants are implemented or completed each year.

Prepare NEPA Documents When:

1. a Federal Aid grant is planned,
 2. a Federal Aid grant is renewed or amended, changing the scope of activities, or
 3. sufficient detail has become available to make a NEPA determination.
-

Public Involvement

NEPA requires that environmental information be made available to the affected and interested public before decisions are made and actions initiated. The public (officials and citizens) can include persons who (1) will be affected, (2) think they will be affected, or (3) need to be or want to be involved in the proposed action. The extent of public involvement in the NEPA process depends upon the nature of the proposed action and character of public interest (national, regional, or local). Guidelines for determining the extent of public involvement are summarized in Appendix F. Records should be maintained documenting all public involvement.

Scoping Process:

1. Identify the affected public
 2. Provide advance notice of meeting
 3. Provide information: objectives; proposed action; purpose and need for action; preliminary alternatives and impacts
 4. Scoping meeting: learn about public concerns; record comments; allow adequate time for involvement; maintain a public record
-

Scoping is an important means of acquiring early public involvement in the preparation of an EIS or EA. Early participation by other agencies and the affected public may generate useful information in situations where an EA is being prepared. The objectives of scoping are to identify significant issues and to translate these into the purpose and need for the action, the action(s) to be taken, alternatives to be considered, and impacts to be addressed. Scoping streamlines and focuses the analysis and decision-making process by ensuring that all important issues are identified and addressed, and unimportant issues in the NEPA process are eliminated from analysis. In essence, scoping is used to design the EIS or EA. Effective scoping should reduce paperwork, delays, and costs and improve the effectiveness of the NEPA process.

Scoping can be informal, occurring initially among staff within the natural resource agency; or it may be formal, involving members of the affected public. Public scoping is encouraged for development of an EA because it helps satisfy NEPA's underlying objective for public involvement. Public participation in scoping can be initiated through a number of techniques, such as notices in local newspapers, direct mailings, *Federal Register* notices, etc.

The State coordinates the scoping process for an EA. The State agency should carefully identify the affected public and provide reasonable advance notice of public meetings and comment due dates to facilitate effective public participation. Preliminary scoping information should be provided prior to and at the scoping meeting to solicit meaningful public participation. The scoping information should state the objectives of scoping, the proposed action, the purpose and need for the action, and list preliminary alternatives and impacts. The State agency should strive to understand the public concerns, accurately record their comments, and allow adequate time for involvement by the affected public. The State will maintain a record of public meetings and other public participation in the grant files. The results of scoping should be made available to the affected public.

A formal scoping process is required for an EIS. Therefore, Federal Aid should administer the scoping process to ensure strict compliance with the pertinent CEQ requirements. A report of the scoping process and results should be included in either the EIS or EA.

Steps to Apply the NEPA Process

STEP 1: Categorical Exclusion (CX), page 23

Categorical Exclusion Determination

Grant Review

Exceptions to CX

NEPA Checklist

Action Not Covered by CX

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STEP 2: Environmental Assessment (EA) Required, page 24

Preparation of an Environmental Assessment

Purposes of EA

Draft EA

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Public Review of EA

Final EA

Decision and Implementation

Federal Aid Review

Action Has Significant Impacts

Finding of No Significant Impacts (FONSI)

Public Notice of FONSI

FONSI Review Period

Implementation

Mitigation

Step 3: Environmental Impact Statement (EIS), page 26

Applying the NEPA Process

State agency personnel thoroughly review their grants to determine if categorical exclusions apply (Appendix A or B) to the proposed grant activities, in terms of the nature and scale of the activity. The qualifying criteria of the categorical exclusion, e.g., "...which result in no or only minor changes in the use...", selected must be met. If not, an EA must be prepared. **GO TO STEP 2.**

Grant Review

STEP 1: Categorical Exclusion (CX)

*Categorical Exclusion
Determination*

Circumstances may exist in which normally categorically excluded actions may result in adverse effects on the environment. These circumstances are termed "exceptions" to categorical exclusions and require the preparation of an EA. Exceptions to categorical exclusions are found in Appendix C.

Exceptions to CX

A NEPA Checklist (Appendix G) has been developed, which incorporates the exceptions to categorical exclusions. If a proposed action is believed to fit one or more categorical exclusions, then the NEPA Checklist is completed by the State for the proposed action. If the action is not covered by a categorical exclusion, an EA must be prepared. **GO TO STEP 2.**

NEPA Checklist

If any of the exceptions on the NEPA Checklist receive a "Yes" check, an EA is needed. **GO TO STEP 2.**

Action Not Covered by CX

If one or more categorical exclusions pertain, and no exceptions to categorical exclusions apply (all "No" checks on NEPA Checklist), then the NEPA Checklist is signed by the appropriate State personnel and forwarded, along with the grant documents, to the Regional Federal Aid office for staff evaluation and concurrence.

Action Covered by CX

For PFO grants, State personnel should use the NEPA Checklist to evaluate the environmental impacts of proposed projects, and provide Federal Aid with recommendations on which categorical exclusion fits each State project. Basic documentation (Appendix H) should be attached to the Checklist confirming how the individual projects meet the categorical exclusion(s).

Program Funding Option (PFO) Grants

The appropriate Regional Office Federal Aid staff specialist reviews the State agency's proposed categorical exclusion(s). If the staff specialist concurs with the state's recommendation, Federal Aid documents the categorical exclusion determination with the NEPA Checklist or an EAS for the administrative record. NEPA compliance is complete; and provided other compliance requirements have been met, the action can be implemented immediately.

STEP 2: Environmental Assessment (EA) Required

*Preparation of an
Environmental
Assessment*

Purposes of EA

The primary purposes of the EA are to determine whether an activity will have significant impacts and to address unresolved environmental issues. An EA is prepared if the activity is not categorically excluded or the impacts of the activity are uncertain. Completion of an EA assists in making the determination to prepare an EIS and facilitates preparation of one when necessary. An EA also aids agency compliance with NEPA when no EIS is necessary. An EA may also be prepared if it is determined that it would: (1) aid in planning or decision-making, (2) serve as a vehicle to gain public input or facilitate interagency coordination, (3) simplify permit approval, or (4) expedite other necessary legal clearances.

Draft EA

The State agency should prepare the EA in close coordination with Federal Aid. The EA must be prepared in accordance with Department of the Interior NEPA procedures and Fish and Wildlife Service NEPA guidelines. Draft EAs should be submitted to Federal Aid to ensure appropriate content and level of detail. Federal Aid will coordinate preparation of the EA with the Service Regional Environmental Coordinator, as appropriate.

Public Notice of EA

Public notification is required to allow the affected public to be involved in the EA process. After the draft EA is reviewed by Federal Aid for compliance with Department and Service NEPA procedures and guidelines, it should be made available by appropriate notice or be distributed to the affected public. Notification of the availability of an EA must be provided to those who have requested it on an individual action.

No specific time period is required for public review of the EA. The length of the public review period is determined by Federal Aid and should normally be the same as the public review period required for any accompanying planning or decision-making process. In general, a 30-day review period should be adequate for most EAs. If there has been ample opportunity for public involvement through other means, the length of the review period can be reduced.

Public Review of EA

A final EA that addresses the comments of the public, and other Federal, State and local agencies should be prepared. In cases where an EA is expected to generate few if any comments, a single EA can be made available to the affected public.

Final EA

Following public review of the EA, the EA and public comments should be forwarded to Federal Aid to ensure that the comments are adequately addressed and to determine whether or not an EIS needs to be prepared. A decision that the activity has significant impacts necessitates the preparation of an EIS. The finding must be based on the information presented in the EA and any associated documentation referenced by the EA. Appendix I provides information to assist in the determination of whether an EIS is required.

Federal Aid Review

Decision and Implementation

If an EIS is required, a Notice of Intent (NOI) to prepare an EIS is published by the Service in the *Federal Register*. **GO TO STEP 3.**

Action Has Significant Impacts

If the proposed project will not significantly affect the quality of the human environment, a Finding of No Significant Impact (FONSI) is prepared and signed by the Service.

Finding of No Significant Impact (FONSI)

The FONSI must be made available to the affected public to inform them of the decision. A combination of methods may be used to provide notice, tailored to the needs of the particular case. Local mailings, publication in newspapers, or radio announcements are appropriate means of informing the affected public. For proposed actions with effects that are primarily of local concern, the State's public notice procedures for comparable actions may be used.

Public Notice of FONSI

**FONSI
Review
Period**

In certain circumstances, Federal Aid must make the FONSI available for public review for 30 days prior to implementation of the decision. This should be done if the proposed action:

- is a borderline case (i.e., there is a reasonable argument for preparation of an EIS).
- is an unusual case, a new kind of action, or a precedent-setting case.
- elicits either scientific or public controversy.

Implementation

The action may be initiated immediately following completion of public notification or review, as appropriate to the situation. The State agency and Federal Aid must substantially comply with the decision made in the FONSI. Minor details encompassed by the proposed action may be modified. For example, a boundary fence incorporated in a proposal to construct a public access facility could be eliminated without affecting the determination.

Mitigation

Mitigation measures included in the proposed action to preclude significant effects are enforceable. If mitigation measures are not implemented, an EIS or reevaluation of the proposal is required.

STEP 3: Environmental Impact Statement (EIS)

While some Federal Aid projects may require EISs, they are relatively rare. In some situations, it may be evident that the proposal is a major Federal action which will significantly affect the quality of the human environment. These cases require an EIS.

Determinations of major Federal actions and significant effects on the human environment are subject to variable interpretation, and no hard-and-fast rules are available to label an action conclusively one way or the other. The CEQ has defined major Federal actions, and thresholds for “significantly,” both in terms of context and intensity. Finally, the courts have also established legal precedents which serve to interpret the concepts of major and significant.

The purpose of this document is to assist the user through the NEPA process up to the point of developing an EIS. Consult with the Regional Environmental Coordinators, agency guidance on internal NEPA procedures, and the CEQ Regulations implementing NEPA when preparation of an EIS is required.

NEPA Documents

List of Documents and Appendices Where Found

Document	Prepared By	Appendix
Environmental Action Statement (EAS)	Federal Aid	D
NEPA Compliance Checklist	State Agency	G
Environmental Assessment (EA)	State Agency	N/A
NEPA Documentation for PFO Grants	State Agency	H
Public Notice for EA	State Agency	J
Finding of No Significant Impact (FONSI)	Federal Aid	E
Public Notice for FONSI	Federal Aid	K

NEPA compliance is necessary for every grant proposed for Federal Aid funding. NEPA documents such as Checklists, EAs, or EISs should precede or accompany the grant documents for new projects, renewals, or amendments submitted for formal approval. The grant agreement cannot be approved nor can the proposed action be undertaken until the NEPA process has been completed. The type of documentation required will depend on the nature of the proposed action, environmental impact expected, and the nature and extent of public controversy generated by the grant proposal. This section discusses the contents of NEPA documents and is organized in the order in which these documents are likely to be encountered.

Environmental Action Statement

The EAS establishes a process for internal review of Service NEPA decision documents within the Regional Office to ensure inter-program coordination. It also provides an appropriate administrative record of the NEPA decision.

The EAS is a one-page document summarizing the proposal, the Service decision, references to supporting documents (if any), and a signature block (Appendix D). The EAS should accompany the decision documents for the action and be signed after the NEPA determination has been made. The signature approval blocks may be modified to accommodate Regional Office protocol.

The EAS is part of the Service's NEPA administrative record for a grant and should be maintained in the respective Federal Aid grant file. Although it is not normally distributed to the public, the EAS may be provided whenever requested, in the same manner as other NEPA documents.

NEPA Compliance Checklist

The NEPA Compliance Checklist (Appendix G) provides a process for making and documenting a NEPA determination. A NEPA Compliance Checklist is completed by the State. Use of the Checklist is required in certain situations. Refer to Director's Order No: 127 for details.

Generally one Checklist is completed and submitted to Federal Aid with each Application for Federal Assistance (AFA). If the Project Statement does not provide sufficient detail to make a determination at the AFA level for some activities, the checklist is completed prior to approval of the grant agreement that includes the necessary

Prepare an EAS When:

1. a grant is categorically excluded,
 2. a FONSI is signed,
 3. emergency NEPA actions need to be implemented,
 4. after the review of an EA, a decision is made to prepare an EIS, or
 5. additional internal review and documentation of the NEPA administrative record is desirable.
-

Complete a Checklist When:

1. a new grant is proposed,
 2. new work is proposed for an existing grant,
 3. an existing grant is continued for another 3 – 5 years,
 4. sufficient detail has become available to make a determination, or
 5. required by Director's Order No: 127.
-

information. First, appropriate categorical exclusions are identified for each work activity within the Project Statement. Then, each activity is compared with the Checklist items to determine whether it represents an exception to a categorical exclusion. As discussed previously, a “Yes” determination on any Checklist item requires the preparation of an EA. Documentation supporting the determinations may be attached to the Checklist if necessary.

The NEPA Compliance Checklist also serves as a portion of the administrative record by providing a means of documenting NEPA compliance. It may be substituted for the EAS. The Checklist should be signed by the person that completed the document, usually the Project Leader, and an individual within the State that has signature authority for grant documents (State Authority Concurrence). The appropriate Federal Aid staff specialist documents the determination on the Checklist, notes any exceptions such as activities that may not be categorically excluded, and signs and dates in the signature block.

Environmental Assessment

An EA is a brief, but complete, document which includes the information necessary to make a determination of whether or not an EIS will be required. The EA is usually prepared by the state agency. While there is no maximum page limit, 10 – 15 pages is generally recognized as the average upper limit, excluding appendices. An EA should discuss the purpose and need for the proposal, alternatives, the affected environment, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. The content of each section is discussed below.

Basic EA Outline

- i. Purpose and Need for Action
 - ii. Summary of Public Scoping
 - iii. Alternatives
 - iv. Affected Environment
 - v. Environmental Consequences
 - vi. List of Preparers
-

Purpose and Need for Action

Describe what the grant is intended to accomplish from a resource perspective. For example, a purpose could be “to provide improved public fishing access to a particular river.” The purpose should be goal oriented, not a statement of a specific project action. The goals and objectives included in grant documents may help define the project purpose. The need is the problem or opportunity compelling the agency to take action, e.g., the need to increase safety at a public access facility. Briefly describe the problem to be corrected or identify what is required or useful to fulfill the opportunity. A good, narrowly focused statement of need will help to define the range of reasonable alternatives that will accomplish the purpose.

The following information is also useful, as appropriate:

- | | |
|------------------|--|
| Background: | Discuss what has been done to date to address the identified problem. |
| Vicinity map: | Provide a map of the project area at a scale appropriate to the scope of the project. |
| Laws/Directives: | Mention any laws, mandates, directives which are relevant. |
| Concerns/Issues: | Identify major issues associated with the project. Is there public controversy? Note any special restrictions or special considerations. |

Summary of Public Scoping

Public scoping is not required for the preparation of an EA, but it is encouraged. Summarize the results of scoping in the EA, and attach a detailed report of scoping as an appendix to the EA. Identify all the issues raised. For those issues which will obviously not result in significant impacts or are outside the scope of the project, the EA should identify them and explain why they will not be analyzed in detail. Those actions and/or alternatives which have the potential to result in significant impacts must be analyzed in detail in the EA.

This section should identify all publics that have been contacted and given the opportunity for input.

- List all public notices, providing date, name of publication, and page(s).
- List any public meetings (time and place) which were held and summarize the outcome of such meetings.
- List any persons, offices, bureaus, organizations, or agencies who were contacted during the preparation of the EA (either to collect or corroborate information).

Alternatives

Alternatives are the heart of the EA because they define the issues and provide a clear basis of choice by the decision-maker and the public. Include an alternative comprising the proposed action, a no action alternative, and other reasonable alternatives that satisfy the purpose and need, to the extent practicable. Alternatives that are feasible and prudent from a technical and economic standpoint should be identified. They should be given equal treatment as far as scope is concerned so they can provide clear choices for the decision-maker. Alternatives should be developed in consideration of scoping comments.

Alternatives which were considered, but determined to be infeasible, i.e., dismissed from further analysis, should be identified with an explanation as to why they are considered infeasible. Typically, alternatives are found to be infeasible due to economic, technological, or legal considerations, or they will not satisfy the purpose and need for which the EA is being prepared.

A reasonable range of alternatives should be addressed. One of them will always be the “no action” alternative, and one will be the proposed action. However, more than just these two should be available to the decision-maker. Sometimes it may seem that there are simply no reasonable alternatives to the proposed action. This could mean that the project has progressed beyond where NEPA is useful as a planning tool. A review of past actions, opportunities, etc., that led to the current proposed alternative, will often reveal that meaningful alternatives had in fact been considered earlier in the process. These may be summarized and included as alternatives for consideration, or alternatives dismissed.

Identify selection standards, if appropriate, for the alternatives. These could be any major factor influencing the agency's decision, including agency goals, purpose, need, environmental consequences, technical feasibility, monetary constraints, or project benefits. If selection standards are identified, they should be applied consistently and objectively to all alternatives.

Each alternative, including the proposed action, should include a complete description of what specific actions will be taken, and how the work will be accomplished. Quantify the actions to the extent possible (e.g., usage levels, facilities developed, miles of roads, management prescriptions, etc.). Mitigation, as appropriate, should be included in each alternative, except the no action alternative. Avoid describing alternatives on the basis of strategies, goals, or objectives. Alternatives should not address impacts. Impacts are covered in the Environmental Consequences section of the EA. Alternatives should address actions proposed to be taken.

If there are several alternatives to be considered, insert a brief, concise table that summarizes the actions by alternative at the end of this section. The table allows the decision-maker and the affected public to compare changes in the level of actions between alternatives with the no action alternative. These differences can then be analyzed in the subsequent Environmental Consequences section of the EA.

Affected Environment

Provide a clear description of present conditions in the area to be affected by the proposed action and the alternatives. The affected environment establishes a baseline of current environmental conditions for describing the impact of alternatives, including the proposed action. Limit the description of biological, physical, social, and economic conditions to those pertinent to the actions addressed in the alternatives and to the impacts addressed in the environmental consequences chapter. This section should not be a detailed description of "the environment at large." The EA need only supply as much information as is necessary for the decision-maker to understand the discussion in the "Environmental Consequences" section. Particular mention should be made of the presence (or absence) of any endangered or threatened species or their critical habitat, historic or cultural resources, parklands, prime or unique farmlands, wetlands, 100-year floodplains, wild and scenic rivers, or other ecologically critical areas (e.g., wilderness areas, research natural areas, etc.).

Environmental Consequences

Develop the analysis for this section by identifying impact topics for each alternative, including the no action alternative. Typically only a few impact topics (effects) from the following list will be relevant:

- | | |
|--------------------|--------------------|
| ■ Access | ■ Aesthetics |
| ■ Air Quality | ■ Animal Welfare |
| ■ Biodiversity | ■ Coastal Zone |
| ■ Coastal Wetlands | ■ Coastal Barriers |

- Cultural and Historic Resources
- Energy/Mineral Resources
- Exotic or Non-indigenous Species
- Fishery Resources
- Indian Sacred Sites or Trust Resources
- Land Use
- Recreation
- Soil Effects
- Target or Non-target Species
- Vegetation
- Water Quality and Quantity (ground and surface water)
- Wild and Scenic Rivers
- Economic Effects
- Environmental Justice
- Farmland (prime or unique)
- Floodplain Effects
- International Effects
- Public Use
- Social Effects
- Species of Special Concern
- Threatened and Endangered Species
- Wastes (hazardous or solid)
- Wetlands
- Wildlife Resources

For each impact topic describe both qualitatively and quantitatively the environmental consequences of implementing each alternative, including the no action alternative. The impacts expected from not implementing any of the action alternatives, i.e., the no action alternative, form the environmental baseline to which the effects of the action alternatives will be compared. Describe the severity or magnitude of the expected effects, and their significance, for each impact topic.

The scope of analysis of impacts to be addressed in the EA should include only impacts caused by the proposed action and alternatives; not impacts resulting from prior perturbations or from other unrelated actions. Both significant beneficial and adverse impacts should be addressed in the analysis. Present the analysis in specific terms, such as an increase or decrease in the number of ducks produced, the expected change in the number of fishing visits, or area of wetland affected.

Do not “market” the proposed action. The discussion of environmental consequences should be a factual description of what the implications will be for each of the alternatives, compared to the no action alternative. Limit the level of detail and depth of impact analysis to that needed to determine whether there are significant environmental effects. The EA is to be an analytical document and not a decision document

The environmental consequences section should address the significance of direct, indirect, cumulative, and unavoidable adverse and beneficial environmental effects for each alternative, as appropriate for the situation. The analysis of impacts should specifically acknowledge threatened and endangered species and critical habitat, wetlands, floodplains, prime farmlands, and historical/cultural resources as pertinent. A cumulative impact analysis should be prepared, if it is deemed necessary through scoping, to make a determination of significance of the proposed

action. Analysis of cumulative effects should consider past, present, and reasonably foreseeable future actions, regardless of whether they are Federal or non-Federal.

This section should also discuss proposed mitigation for adverse environmental impacts, such as:

- Avoiding impact altogether
- Minimizing impacts by limiting the degree of the action
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment
- Timing the action in a way that may minimize damage
- Compensating for the impact by replacing or providing substitute resources or environments.

A brief, concise table should be inserted at the end of this section that summarizes the environmental effects of each impact topic by alternative. The table allows the decision-maker and the affected public to compare changes in the level of impacts between alternatives with the no action alternative. This table may be useful when making presentations to the decision-maker and the public.

Summary of Impacts by Alternatives

(expand table as necessary)

Impact Topics	Alternative A. No Action	Alternative B. Proposed Action	Alternative C. (Title)
Water Quality	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
Threatened and Endangered Species	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
Fish and Wildlife Resources	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
Wetlands	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
Cultural Resources	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
(other impact topics)	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)

List of Preparers

Provide a list of the preparers who wrote, reviewed, and are responsible for the content of the EA.

Appendices

Include any backup or supportive information, material, or analysis necessary for the reader to understand the discussion/analysis in the EA. Substantive comments from public scoping should be included here.

Public Notice for EA

Availability of an EA for public comment is normally announced by the State agency. The EA is made available by appropriate public notice and/or circulated to the affected public. In most cases, particularly where an EA is expected to generate few if any comments, a single EA can be circulated to the affected public. In such cases, the EA would normally be referred to as an “EA” rather than a “Final EA.” In other situations, a draft and final EA may be prepared and circulated. In such cases, the final EA should address the comments of the public, and Federal, State and local agencies. The draft and final EA should be circulated to the public with the accompanying draft and final project documents, respectively, if they contain information useful for public review of the EA. All substantive public comments and the Service’s response to those comments should be attached to the final EA.

The EA may be advertised in a variety of media outlets. The announcement should be directed at the public affected by the proposed action. Public notices and news releases should briefly and clearly describe the proposed action, its location, the name and address of an official to whom comments should be directed, and give instructions for obtaining additional information. Public notices and news releases for actions affecting floodplains and wetlands must also contain a statement identifying the nature of the floodplain or wetland impact and brief descriptions of alternatives being considered. Appendix J is an example of a public notice suitable for a newspaper.

Finding of No Significant Impact (FONSI)

The FONSI (Appendix E) is a legal decision document prepared by Federal Aid that briefly summarizes the actions to be taken and reasons why the actions will not have a significant effect on the environment. It also documents why an EIS will not be prepared. If the EA is included with the FONSI, i.e., attached, the FONSI may incorporate the discussion in the EA by reference. The FONSI should summarize enforceable mitigation which was a factor in the determination. The FONSI should be signed in accordance with the regional office protocol.

Public Notice for FONSI

The FONSI must be made available to the affected public to inform them of the Service’s NEPA determination, and in certain cases, the FONSI and associated EA must be made available for public review before the action can be implemented. Local mailings, publication in newspapers, radio and television announcements may be used. The public notice (Appendix K) which is prepared by Federal Aid should summarize the information in the FONSI, provide details on where the FONSI can be obtained, and if appropriate, inform the public on how comments on the EA can be made.

The FONSI Must:

1. summarize the actions to be taken,
 2. explain why an EIS is not necessary,
 3. briefly describe the alternatives considered,
 4. disclose compliance with the Executive Orders on Floodplains and Wetlands, and
 5. declare a finding of no significant impact.
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Other Considerations

Adoption

When another Federal agency is involved in the same Federal Aid project, the Service can adopt the other Federal agency's EA to reduce duplication of effort and streamline the NEPA compliance process (Appendix L).

There are two principal situations where adoption of another Federal agency's EA is appropriate. One is where the Service participated in the other agency's NEPA process as a designated cooperating agency. In this case the Service may adopt the other agency's EA and issue its own FONSI. A second situation is where the Service has not been a cooperator, perhaps because of differences in timing of Federal actions on the same Federal Aid project, e.g., a permit is obtained before financial assistance is requested. The Service must make the final EA available to the public and other agencies. The EA may be re-circulated concurrent with issuance of the FONSI. In both of the foregoing circumstances, the Service must independently review the EA to ensure that it meets its own and Departmental NEPA procedures. If the EA is deficient, it may be supplemented with the appropriate information or a new EA may be prepared.

Supplements

Supplements should be prepared for draft or final EAs if substantial changes are made to the proposed action or significant, new circumstances or information becomes available that would substantially affect the analysis of impacts and the decision. For example, a supplement may be prepared for a Federal Aid project renewal or amendment if there is a change in the scope, design or location of proposed work which would result in impacts different from those discussed in the original EA. In such cases, a supplement is prepared when the changes are judged to have a material affect on the decision-maker's choice.

While the basic format of an EA is recommended for supplements, the detail and coverage can be shortened by referencing appropriate information in the original EA. The supplement should focus on the new or modified aspects of the project. However, any referenced information must be made available to the public, if requested.

List of Major References and Training Opportunities

Useful References

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500-1508. Council on Environmental Quality. (http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm)

Forty Most Asked Questions Concerning CEQ's NEPA Regulations. Council on Environmental Quality. (<http://ceq.eh.doe.gov/nepa/regs/40/40P1.HTM>)

Considering Cumulative Effects Under the National Environmental Policy Act. Council on Environmental Quality. January, 1997. (<http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>)

Environmental Justice—Guidance Under the National Environmental Policy Act. Council on Environmental Quality. December, 1997. (<http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf>)

Department of the Interior NEPA Procedures. 516 DM 1-7.

550FW 1. Fish and Wildlife Service NEPA Guidance. National Environmental Policy Act Policy and Responsibilities.

550FW 2. Fish and Wildlife Service NEPA Guidance. *National Environmental Policy Act Compliance Guidance.*

550FW 3. Fish and Wildlife Service NEPA Guidance. *Documenting and Implementing Decisions.* (<http://www.fws.gov/~directives/550fw3.html>)

Director's Order No: 127. Fish and Wildlife Service NEPA Guidance. *National Environmental Policy Act Compliance Checklist.* (<http://www.fws.gov/directives/do127.html>)

Training Opportunities

ECS3121. *Integrating NEPA Into Agency Activities.* Fish and Wildlife Service, National Conservation Training Center, Environmental Conservation Branch. (304) 876-7448.

Glossary

Affected Environment – A description of the existing environment to be affected by the proposed action (40 CFR 1502.15).

Alternative – A reasonable way to fix the identified problem or satisfy the stated need (40 CFR 1502.4).

Application for Federal Assistance (AFA) – The form (SF-424) used to transmit a grant proposal to carry out one or more projects.

Categorical Exclusion (CX) – A category of actions that do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a Federal agency pursuant to NEPA (40 CFR 1508.4).

Council on Environmental Quality (CEQ) – Established under Title II of NEPA to develop Federal agency-wide policy and regulations for implementing the procedural provisions of NEPA, resolve interagency disagreements concerning proposed major Federal actions, and to ensure that Federal agency programs and procedures are in compliance with NEPA.

Cumulative Effect – The incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).

Endangered Species Act of 1973 (ESA) – Requires that all agencies ensure that their actions do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of the habitat of the species.

Environmental Consequences – Environmental effects of project alternatives, including the proposed action, any adverse environmental effects which cannot be avoided, the relationship between short-term uses of the human environment, and any irreversible or irretrievable commitments of resources which would be involved if the proposal should be implemented (40 CFR 1502.16).

Environmental Action Statement (EAS) – A Service-required document prepared to improve the Service's administrative record for categorically excluded actions that may be controversial, emergency actions under CEQ's NEPA regulations (40 CFR 1506.11), decisions based on EAs to prepare an EIS, and any decision where improved documentation of the administrative record is desirable, and to facilitate internal program review and final approval when a FONSI is to be signed at the FWS-WO and FWS-RO level (550 FW 3.3C).

Environmental Impact Statement (EIS) – A detailed written statement required by section 102(2)(C) of NEPA, analyzing the environmental impacts of a proposed action, adverse effects of the project that cannot be avoided, alternative courses of action, short-term uses of the environment versus the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources (40 CFR 1508.11).

Environmental Assessment (EA) – A concise public document, prepared in compliance with NEPA, that briefly discusses the purpose and need for an action, alternatives to such action, and provides sufficient evidence and analysis of impacts to determine whether to prepare an environmental impact statement or finding of no significant impact (40 CFR 1508.9).

Finding of No Significant Impact (FONSI) – A document prepared in compliance with NEPA, supported by an environmental assessment, that analyzes whether a Federal action will have no significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared (40 CFR 1508.13).

Grant – An award of financial assistance by the Federal Government to an eligible grantee to carry out one or more approved projects.

Grant Proposal – The documents submitted to the Regional Director of the U.S. Fish and Wildlife Service requesting approval of one or more projects.

Grant Agreement – The documents used to make an award of financial assistance, including the Grant Agreement Form (Form 3-1552), the approved project statement(s), and the supporting documentation.

Human Environment – Includes the natural and physical environment and the relationship of people with the environment (40 CFR 1508.14).

Impact (Effect) – A direct result of an action which occurs at the same time and place; or an indirect result of an action which occurs later in time or in a different place and is reasonably foreseeable; or the cumulative results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions (40 CFR 1508.8).

Lead Agency – The agency or agencies responsible for preparing the environmental impact statement (40 CFR 1508.16).

Major Federal Action – Actions with effects that may be major and which are potentially subject to Federal control and responsibility (40 CFR 1508.18).

Mitigation – Planning actions taken to avoid an impact altogether to minimize the degree or magnitude of the impact, reduce the impact over time, rectify the impact, or compensate for the impact (40 CFR 1508.20)

National Environmental Policy Act of 1969 (NEPA) – Requires all agencies, including the Service, to examine the environmental impacts of their actions, incorporate environmental information, and utilize public participation in the planning and implementation of all actions. Federal agencies must integrate NEPA with other planning requirements and prepare appropriate NEPA documents to facilitate better environmental decision-making. NEPA requires Federal agencies to review and comment on Federal agency environmental plans/documents when the agency has jurisdiction by law or special expertise with respect to any environmental impacts involved. (42 U.S.C. 4321-4327) (40 CFR 1500-1508).

Notice of Intent (NOI) – A notice that an environmental impact statement will be prepared and considered (40 CFR 1508.22).

No Action Alternative – The alternative where current conditions and trends are projected into the future without another proposed action (40 CFR 1502.14[d]).

Project – One or more related undertakings necessary to fulfill a need(s), as defined by the State, and consistent with the purposes of the appropriate Act. A project is the work to be done to accomplish a quantifiable or verifiable objective, as described in a single project statement. For projects to implement a strategic plan or a comprehensive management system, a project is the work unit or work proposal to accomplish a specific strategy in a strategic plan.

Project Statement – A description of the work to be done to accomplish a quantifiable or verifiable objective, consisting of a narrative of the need, objective, approach, expected results or benefits, location and estimated cost.

Proposed Action – A plan that contains sufficient details about the intended actions to be taken, or that will result, to allow alternatives to be developed and its environmental impacts analyzed (40 CFR 1508.23).

Record of Decision (ROD) – A concise public record of decision prepared by the Federal agency, pursuant to NEPA, that contains a statement of the decision, identification of all alternatives considered, identification of the environmentally preferable alternative, a statement as to whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted (and if not, why they were not), and a summary of monitoring and enforcement where applicable for any mitigation (40 CFR 1505.2).

Relationship of Short-Term Uses and Long-Term Productivity – The balance or trade-off between short-term uses and long-term productivity need to be defined in relation to the proposed activity in question. Each resource, of necessity, has to be provided with its own definitions of short- term and long-term (40 CFR 1502.16).

Scope – The range of actions, alternatives, and impacts to be considered in an environmental impact statement (40 CFR 1508.25).

Scoping – An early and open process for determining the extent and variety of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7).

Significant – Use in NEPA requires consideration of both context and intensity (40 CFR 1508.27):

Context – significance of an action must be analyzed in its current and proposed short-and long-term effects on the whole of a given resource (e.g., affected region) Intensity – Refers to the severity of the effect

Tiering – The coverage of general matters in broader environmental impact statements with subsequent narrower statements of environmental analysis, incorporating by reference, the general discussions and concentrating on specific issues (40 CFR 1508.28).

Unavoidable Adverse Effects – Effects that can not be avoided due to constraints in alternatives. These effects do not have to be avoided by the planning agency, but they must be disclosed, discussed, and mitigated, if possible (40 CFR 1500.2[e]).

Appendices

Department of the Interior Categorical Exclusions

(Apply to all Departmental Bureaus, including the Fish and Wildlife Service)

(From 516 DM 2, Appendix 1, 9/26/84)

The following actions are Departmental categorical exclusions (CX). However, environmental documents will be prepared for individual actions within these CX if the exceptions (Appendix C) apply.

- 1.1 Personnel actions and investigations and personnel services contracts.
- 1.2 Internal organizational changes and facility and office reductions and closings.
- 1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties.
- 1.4 Law enforcement and legal transactions, including such things as arrests, investigations, patents, claims, legal opinions, and judicial activities including their initiation, processing, settlement, appeal or compliance.
- 1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.
- 1.6 Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities.
- 1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g., limited size and magnitude or short-term effects.
- 1.8 Management, formulation, allocation, transfer and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)
- 1.9 Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals.
- 1.10 Policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.
- 1.11 Activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public.

Effective September 26, 1984

Fish and Wildlife Service Categorical Exclusions

(Incorporated in the Departmental Manual)

(From 516 DM 6, Appendix 1, 1/16/97)

1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. In addition to the actions listed in the departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

- (1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.
- (2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.
- (3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.
- (4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller; continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

- (1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.
- (2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.
- (3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.
 - i. The installation of fences.
 - ii. The construction of small water control structures.
 - iii. The planting of seeds or seedlings and other minor revegetation actions.
 - iv. The construction of small berms or dikes.
 - v. The development of limited access for routine maintenance and management purposes.
- (4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.
- (5) Fire management activities, including prevention and restoration measures, when conducted in accordance with departmental and Service procedures.
- (6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

- (7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.
- (8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.
- (9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.
- (10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.
- (11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.
- (4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.
- (5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.
- (6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.
- (7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:
 - (a) Assessment of civil penalties.
 - (b) Forfeiture of property seized or subject to forfeiture.
 - (c) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.
- (8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

C. Permit and Regulatory Functions.

- (1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.
- (2) The issuance of ESA section 10(a)(1)(B) “low-effect” incidental take permits that, individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan.
- (3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

- (1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.
- (2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

Effective January 16, 1997

Exceptions to Categorical Exclusions

*(in the Departmental Manual)
(From 516 DM 2, Appendix 2, 9/26/84)*

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

- | | |
|--|--|
| <p>2.1 Have significant adverse effects on public health or safety.</p> <p>2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.</p> <p>2.3 Have highly controversial environmental effects.</p> <p>2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.</p> <p>2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.</p> | <p>2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.</p> <p>2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.</p> <p>2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.</p> <p>2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.</p> <p>2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.</p> |
|--|--|

Effective September 26, 1984

EXAMPLE: Environmental Action Statement (EAS)

United States Fish and Wildlife Service Environmental Action Statement

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the action of (describe action):

Check One:

_____ is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.

_____ is found not to have significant environmental effects as determined by the attached environmental assessment and finding of no significant impact

_____ is found to have significant effects and, therefore, further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

Signature Approval:

_____ (1) Originator	_____ Date	_____ (2) WO/RO Environmental Coordinator	_____ Date
_____ (3) AD/ARD	_____ Date	_____ (4) Director/Regional Director	_____ Date

Effective March 29, 1996

EXAMPLE: Finding of No Significant Impact (FONSI)

Finding of No Significant Impact Proposed Development of Public Access Square Pond, Acton, Maine

The Maine Department of Inland Fisheries and Wildlife proposes to develop a boat launching facility in Acton, Maine. The purpose of the proposed development is to provide safe fishing and recreational boating access to Square Pond. Planned activities include increasing the width of the gravel entrance road to two lanes, construction of a turning spur and gravel parking area for 30 rigs, and construction of a single lane concrete plank ramp with adjacent float system. The proposed project will be funded jointly by the Maine Department of Inland Fisheries and Wildlife and the U. S. Fish and Wildlife Service under the Federal Aid in Sport Fish Restoration Act.

Some 22 alternatives including acquisition and development at other locations were evaluated over a period of several years. These alternatives were dismissed from further consideration due to inadequate physical characteristics of the site, concerns for public safety, environmental or social conflicts or inability to acquire an adequate estate in land. Accordingly, only the proposed and no action alternatives were considered in detail.

Study of the ecologic and socio-economic effects of the proposal has shown them not to represent a negative impact on the quality of the human environment. A portion of these lands is within the floodplain and 0.14 acre of wetland will be affected by the launch ramp and driveway. A wetland function-value assessment determined that wetland functions and values would not be significantly altered by the proposed project. Accordingly, I find that all reasonable alternatives were considered in the evaluation of this project. I, therefore, find that this project complies with the meaning of Executive Order 11990 or 11988.

Based on a review and evaluation of the enclosed, environmental assessment and the supporting references cited below, I have determined that development of the site under Project F-31-D-18 entitled, "Aquatic Access Development and Maintenance - Square Pond" is not a major federal action which would significantly affect the quality of the human environment within the meaning of Section 102 (2) (c) of the National Environmental Policy Act of 1969.

The environmental assessment, prepared by the Maine Department of Inland Fisheries and Wildlife has been adopted by the U.S. Fish and Wildlife Service according to rules contained in 40 CFR 1506.3. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

Regional Director

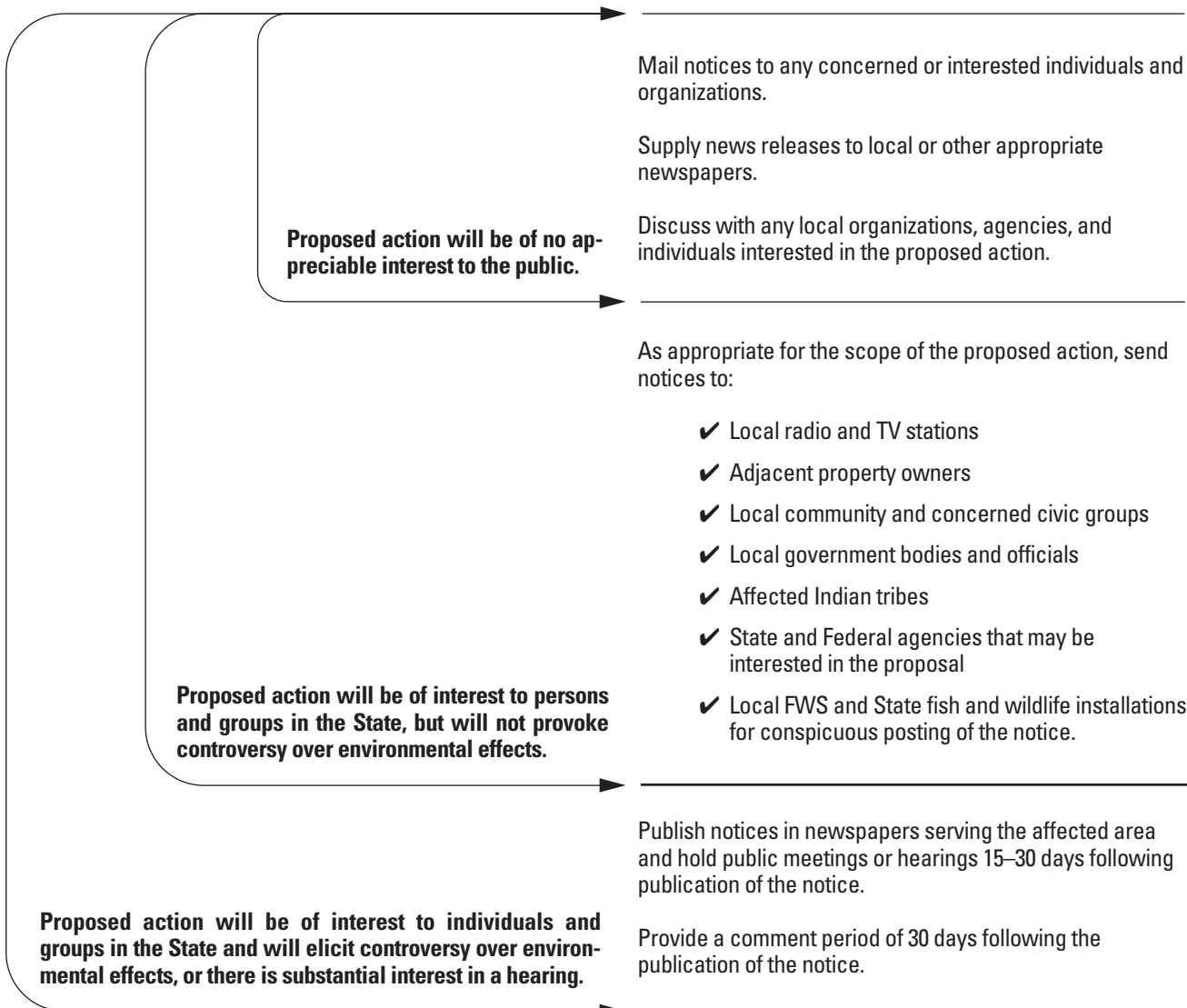
Date

References:

Application for Federal Assistance F-31-D Narrative Statement
Project Agreement F-31-D-18

Enclosure

Public Involvement Guidelines



NEPA COMPLIANCE CHECKLIST

State: _____ Federal Financial Assistance Grant/Agreement/Amendment Number: _____

Grant/Project Name: _____

This proposal ☐ **is**; ☐ **is not** completely covered by categorical exclusion No(s). _____, 516 DM 6 Appendix 1.
(check (✓) one) (Review proposed activities. An appropriate categorical exclusion must be identified before completing the remainder of the Checklist. If a categorical exclusion cannot be identified, or the proposal cannot meet the qualifying criteria in the categorical exclusion, an EA must be prepared.)

Exceptions:

Will This Proposal (check (✓) yes or no for each item below):

<u>Yes</u>	<u>No</u>	
<input type="checkbox"/>	<input type="checkbox"/>	1. Have significant adverse effects on public health or safety.
<input type="checkbox"/>	<input type="checkbox"/>	2. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Land marks.
<input type="checkbox"/>	<input type="checkbox"/>	3. Have highly controversial environmental effects.
<input type="checkbox"/>	<input type="checkbox"/>	4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
<input type="checkbox"/>	<input type="checkbox"/>	5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
<input type="checkbox"/>	<input type="checkbox"/>	6. Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects.
<input type="checkbox"/>	<input type="checkbox"/>	7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
<input type="checkbox"/>	<input type="checkbox"/>	8. Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
<input type="checkbox"/>	<input type="checkbox"/>	9. Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
<input type="checkbox"/>	<input type="checkbox"/>	10. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(If any of the above exceptions receive a "Yes" check (✓), an EA must be prepared.)

Concurrences/Approvals:

Project Leader: _____ Date: _____

State Authority Concurrence: _____ Date: _____

(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

- ☐ is a categorical exclusion as provided by 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.
- ☐ is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1. An EA must be prepared.
- ☐ includes other attached information supporting the Checklist.

Service signature approval:

RO or WO Environmental Coordinator: _____ Date: _____

Staff Specialist, Division of Federal Aid: _____ Date: _____

(or authorized Service representative with financial assistance signature authority)

EXAMPLE:

NEPA Documentation for PFO Grants

NEPA COMPLIANCE, OHIO F-69-P-6

July 1, 1999 – June 30, 2001

1. **Categorical Exclusions.** Categorical exclusions are classes of actions which do not individually or cumulatively have a significant impact on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. Federal Register 62(11):2375–2382 provides criteria for determining projects fitting this category.

Section 1.4A(2) categorically excludes personnel training, environmental interpretation public safety efforts, and other educational activities which do not involve new construction or major additions to existing facilities. Projects in F-69-P-6 fitting this category include:

- Education and Planning Orientation
- Aquatic Education Center Operation
- Fisheries Inservice Training
- Public Communications–Fairport

Section 1.4A(3) categorically excludes the issuance and modifications of procedures including manuals, orders, guidelines and field instructions, when the impacts are limited to administrative effects. Projects in F-69-P-6 fitting this category include:

- Great Lakes Fishery Commission Administration
- Federal Aid Coordination
- Planning Administration

Section 1.4B(1) categorically excludes research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction or contaminants, or no introduction of organisms not indigenous to the affected ecosystem. Projects in F-69-P-6 fitting this category include:

- Largemouth Bass/Sunfish Management Investigations (Statewide)
- Annual BASS Tournament Results
- Review and Development of Sportfishing Publications
- Muskellunge Management Investigations
- Statewide Brown Trout Special Regulations Evaluation
- Smallmouth Bass Length Limit Evaluation

Section 1.4B(2) categorically excludes the operation, maintenance and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible effects on-site or in the vicinity of the site. Projects in F-69-P-6 fitting this category include:

- Fishing Area Maintenance in District One
- Aquatic Ecology Lab Basic Service and Equipment
- Basic Service Sandusky HQ Building

Section 1.4B(3) categorically excludes the construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected area. Projects in F-69-P-6 fitting this category include:

- Installation of Fish Concentration Devices
- Mad River Habitat Improvements Through Partnerships
- Aquatic Habitat Improvement or Manipulation

Section 1.4B(6) categorically excludes the reintroduction or supplementation of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated. Projects in F-69-P-6 fitting this category include:

- Fish Production Requests and Prioritization
- Fish Production and Stocking–Hebron
- Fish Production and Stocking–Kincaid

Criteria Suggesting the Need to Prepare an EIS

For general guidance on what may constitute a “major Federal action” and “significant effect,” refer to 40 CFR 1508.18 and 1508.27, respectively. In addition, one or more of the following criteria, depending on the severity and duration of effects, may trigger the preparation of an EIS. Determinations of major Federal actions and significant effects on the human environment are subject to varying interpretation, and no hard-and-fast rules are available to label an action conclusively one way or the other. The need to prepare an EIS is a matter of professional judgment requiring consideration of all issues in question, particularly all information documented in the EA.

- Controversy over environmental effects (e.g., major scientific or technical disputes or inconsistencies over one or more environmental effects).
- Precedent-setting actions with wide-reaching or long-term implications (e.g., mineral extraction, new road construction, construction of an impoundment).
- Major alterations of natural environmental quality, that may exceed either local, State, or Federal environmental standards.
- Exposing existing or future generations to increased safety or health hazards.
- Conflicts with substantially proposed or adopted local, regional, State, interstate, or Federal land use plans or policies, that may result in adverse environmental effects.
- Adverse effects on designated or proposed natural or recreation areas, such as wilderness areas, parks, research natural areas, wild and scenic rivers, estuarine sanctuaries, national recreation areas, habitat conservation plan areas, fish hatcheries, wildlife refuges, lands acquired or managed with Dingell-Johnson/Pittman-Robertson funds, unique or major wetland areas, and lands within a 100-year floodplain.
- Removal from production of prime and unique agricultural lands, as designated by local, regional, State, or Federal authorities; in accordance with the Department’s Environmental Statement Memorandum No. ESM 94-7.
- Adverse effects on municipal, industrial, or agricultural water supply or quality; or major consumptive use or other long-term commitment of water.
- Condemnation of property rights or fee title to land; or large-scale relocation of people, homes, commercial, industrial, or major public facilities.
- Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.
- Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

EXAMPLE: Public Notice for Draft EA

PUBLIC NOTICE

An environmental assessment for construction of a boat launching site on the Potomac River at the town of Paw Paw, Hampshire County, is being prepared by the West Virginia Division of Natural Resources in accordance with Presidential Executive Order 11988 (Flood Plain Management), Executive Order 11990 (Protection of Wetlands), and the National Environmental Policy Act. Several design alternatives are being considered to mitigate wetland fills.

Persons wishing to comment on this project should write to the West Virginia Division of Natural Resources, Wildlife Resources Section, 1900 Kanawha Boulevard, East, Building 3, Room 808, Charleston, West Virginia, 25305

All comments must be received by June 25, 1991.

EXAMPLE: Public Notice for FONSI

PUBLIC NOTICE OF FEDERAL AID IN SPORT FISH RESTORATION PROJECT

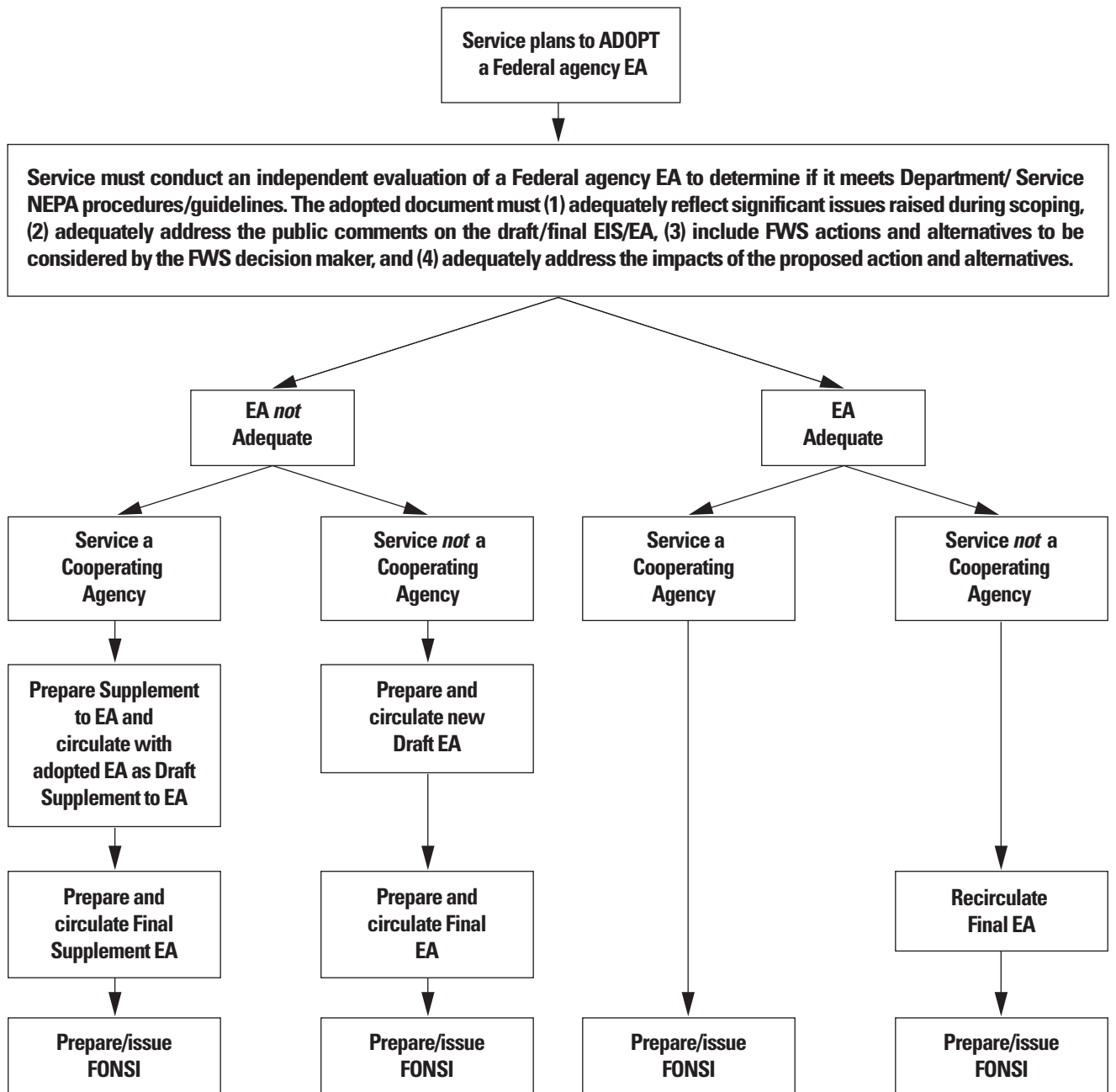
Notice is hereby given that an Environmental Assessment has been prepared for Maine Department of Inland Fisheries and Wildlife Federal Aid Project F-31-D-18 entitled, "Aquatic Access Development and Maintenance - Square Pond". This is a Federal Aid in Sport Fish Restoration project to be funded jointly by the Maine Department of Inland Fisheries and Wildlife and the U.S. Fish and Wildlife Service.

The purpose of the project is to provide fishing and recreational boating access to Square Pond in Acton, Maine. Planned activities include increasing the width of the gravel entrance road to two lanes, construction of a turning spur and gravel parking area for 30 rigs, and construction of a single lane concrete plank ramp with adjacent float system.

This notice is also intended to meet the requirements of the U.S. Fish and Wildlife Service Final Procedures for Implementation of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, by giving notice that a Finding of No Significant Impact has been signed for the above project. The Finding of No Significant Impact and Environmental Assessment may be inspected at the U.S. Fish and Wildlife Service, Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589, and the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Station 41, Augusta, Maine 04333. Copies of the Assessment may also be obtained at the Regional Office, upon payment of a reasonable reproduction cost pursuant to 43 CFR, Part 2, Appendix A.

Comments on the Environmental Assessment may be submitted to the Regional Director, U.S. Fish and Wildlife Service, no later than 30 days from the publication of this notice.

Adoption Process



**U.S. Department of the Interior
U.S. Fish & Wildlife Service
Route 1, Box 166
Sheperdstown, WV 25433**

<http://www.fws.gov>

October 2000



[Federal Register: January 16, 1997 (Volume 62, Number 11)]

[Notices]

[Page 2375-2382]

From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr16ja97-40]

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DEPARTMENT OF THE INTERIOR

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

SUMMARY: This notice announces final revised procedures for implementing the National Environmental Policy Act (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's (Departmental) Manual (516 DM 6). The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species Act (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other environmental laws and executive orders.

EFFECTIVE DATE: January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Don Peterson, Environmental Coordinator, Fish and Wildlife Service, at (703) 358-2183.

Departmental Manual

516 DM 6 Appendix 1

Fish and Wildlife Service

1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on Environmental Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC--Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the environmental review and analysis of documents prepared by other agencies and environmental statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office Environmental Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of Environmental Policy and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with 516 DM 6.2.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decision makers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office, named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office Environmental Coordinator, in accordance with 516 DM 6.2.

1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and

implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, environmental laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decision making activities. Service program guidance on NEPA matters must be consistent with the Service Manual on NEPA guidance and Departmental NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation Act Grant Application Instructions.

1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4), and the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C. 1602-1784). inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the

Service Manual (602 FW 1-3). Reference to this and other National Wildlife Refuge System requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the National Fish Hatchery System.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the Anadromous Fish Conservation Act (CFDA #15.600); North American Wetlands Conservation Act; Fish and Wildlife Act of 1956; Migratory Bird Conservation Act; Food Security Act of 1985; Food, Agriculture, Conservation and Trade Act of 1990; Partnerships for Wildlife Act of 1992; and Consolidated Farm and Rural Development Act. The Service administers financial assistance to States under the Sport Fish Restoration Act (CFDA #15.605), Wildlife Restoration Act (CFDA #15.611), Endangered Species Act (CFDA #15.612 and 15.615), Coastal Wetlands Planning Protection and Restoration Act (CFDA #15.614), and Clean Vessel Act of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the Anadromous Fish Conservation Act may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the North American Wetlands Conservation Act may be obtained through the North American Waterfowl and Wetlands Office. U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. In addition to the actions listed in the departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

(2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

i. The installation of fences.

ii. The construction of small water control structures.

iii. The planting of seeds or seedlings and other minor revegetation actions.

iv. The construction of small berms or dikes.

v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with departmental and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e.,

facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:

(a) Assessment of civil penalties.

(b) Forfeiture of property seized or subject to forfeiture.

(c) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,

Director, Office of Environmental Policy and Compliance, Office of the Secretary, U.S.
Department of the Interior.

[FR Doc. 97-1071 Filed 11-15-97; 8:45 am]

BILLING CODE 4310-55-M



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

DIRECTOR'S ORDER NO: 127

Subject: National Environmental Policy Act Compliance Checklist

Sec. 1 What is the purpose of this Order? This Order establishes policy and procedures for the preparation of an administrative record for complying with NEPA by Service personnel who administer (concur or approve) Federal financial assistance programs that may be categorically excluded or require the preparation of an environmental document (environmental assessment or environmental impact statement).

Sec. 2 Does this Order supersede other guidance? This Order supersedes guidance in [550 FW 3.3C](#) concerning the discretionary preparation of an environmental action statement for NEPA-related actions when applicable to Service Federal financial assistance actions. All other Service actions remain subject to the administrative record guidance in [550 FW 3.3C](#) for NEPA-related matters.

Sec. 3 To whom does this Order apply? This Order applies to all Service personnel who administer (concur or approve) Federal financial assistance programs that may be categorically excluded or require the preparation of an environmental document pursuant to NEPA.

Sec. 4 What are the authorities for taking this action?

- a. National Environmental Policy Act (42 U.S.C. 4321-4347).
- b. Council on Environmental Quality regulations (40 CFR 1500-1508) and other CEQ guidance.
- c. 516 DM 1-6.

Sec. 5 What is the Policy? You must prepare a NEPA Compliance Checklist for most Federal financial assistance actions (including major amendments) that we administer (concur or approve) within the scope of Sections 6, 7, and 8 of this Order. To meet the requirements of this Order, you may use [Form 3-2185](#) (NEPA Compliance Checklist) or, with prior approval of the Assistant Director for Fisheries and Habitat Conservation, you may use a similar checklist. Include the Checklist in the administrative record for the Federal financial assistance action.

Sec. 6 When should I prepare the NEPA Compliance Checklist? Submit the [Checklist](#) to the Service decision maker when:

- a. The proposed action is not completely covered by a categorical exclusion (e.g., the proposal cannot meet the qualifying criteria in the categorical exclusion, and "is not" will be checked on the Checklist);
- b. The proposed action cannot be categorically excluded because an exception to the categorical exclusion applies (e.g., a "Yes" will be checked on the Checklist);
- c. Environmental conditions at or in the vicinity of the site have materially changed, affecting the consideration of alternatives and impacts (applicable to amendments and renewals);
- d. There is a need to document a normally categorically excluded action that may be controversial; or

e. Additional internal review and/or documentation of the NEPA administrative record are desirable.

Sec. 7 To which Federal financial assistance programs does this policy apply? This Order applies to Federal financial assistance programs using appropriated funds and permanent indefinite appropriated funds through the Federal Aid Program that we administer (concur or approve) through the:

a. Division of Federal Aid (e.g., Pittman-Robertson and Dingell-Johnson Acts, Clean Vessel Act, Endangered Species Act, National Coastal Wetlands Conservation Grant Program, etc.).

b. Division of North American Waterfowl and Wetlands (e.g., North American Wetlands Conservation Act and coastal grants authorized by the Coastal Wetlands, Planning, Protection, and Restoration Act).

c. Division of Fish and Wildlife Management Assistance (e.g., Partners for Fish and Wildlife Program assistance and fisheries grants).

Sec. 8 Are there programs where this policy does not apply? This Order does not apply to Federal financial assistance actions in foreign countries, except as appropriate, under Executive Order 12114, January 4, 1979, and the Council on Environmental Quality's guidance, July 1, 1997, on the application of NEPA to proposed Federal actions in the United States with transboundary effects.

Sec. 9 How do I determine the level of NEPA compliance for Federal financial assistance actions?

a. To ensure compliance with NEPA, initiate early coordination and consultation with other Federal and State agencies, Indian tribes, and private parties seeking Federal financial assistance from the Service, in accordance with 516 DM 2.2 and 516 DM 6, Appendix 1.3.

b. We may require applicants seeking Federal financial assistance to provide additional information on the proposal and on its environmental effects as necessary to satisfy our requirements to comply with NEPA, other Federal laws, and executive orders, in accordance with 40 CFR 1506.6 and 516 DM 6, Appendix 1.3A.

c. The NEPA Compliance Checklist will document our decision as to whether or not the Federal financial assistance action:

(1) Meets the requirements for coverage under an existing categorical exclusion, in accordance with 516 DM 2, Appendix 1; 516 DM 6, Appendix 1; and the exceptions to categorical exclusions in 516 DM 2, Appendix 2; or

(2) Requires the preparation of an EA or EIS. [Exhibit 1](#) is an Overview of the NEPA Process and Documentation (flow chart).

Sec. 10 When should I prepare and process the [Checklist](#)? Ensure that the applicant or Service personnel prepare the [Checklist](#) and that appropriate authorities sign it prior to project (e.g., Federal financial assistance) approval. In some cases, the applicant may prepare the Checklist; in other cases, Service personnel. However, we are responsible for the accuracy of the Checklist, final concurrence of the Checklist, and compliance under NEPA. The Checklist is part of the administrative record for a Federal financial assistance action, and you must include it with any documents undergoing public review and ensure that it is available to the public upon request.

Sec. 11 How should differences of opinion regarding NEPA matters be resolved between the State and the Service? Try to resolve differences of opinion between the State and Service regarding the [NEPA Compliance Checklist](#) and other NEPA matters informally at the lowest level (e.g., between the State Project Leader and the Service Federal Aid Staff Specialist or Regional Federal Aid Chief). If any issues remain unresolved, refer them to the Assistant Regional Director or Regional Director for resolution with higher level State officials.

Sec. 12 Are there any additional instructions for preparing the [NEPA Compliance Checklist](#)?

a. The Service signature approval blocks must include the Regional or Washington Office Environmental

Coordinator, as appropriate, for any Federal financial assistance actions requiring the preparation of a Checklist within the scope of [Section 6](#) of this Order.

b. You may attach other supporting documentation and/or an explanation of the "checked" responses, if necessary, to the NEPA Compliance Checklist.

Sec. 13 How can the Service work with State and local governments, local agencies, Indian tribes, and private applicants to reduce paperwork and delays for Federal financial assistance actions?

a. Cooperate with State and local agencies to the fullest extent possible, consistent with 40 CFR 1506.2, to reduce duplication between NEPA and State and local requirements. Such cooperation will include:

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public involvement.
- (4) Joint preparation of environmental documents.

b. Provide assistance and guidance to the States and other applicants on the preparation of environmental documents and implementation of environmental streamlining measures (516 DM 6, Appendix 1.2 and 1.3).

Sec. 14 What is the effective date of this Order? This Order is effective immediately and is applicable to new grants, amendments, or renewals submitted to the Service on or after this date. Any grant actions currently under review by the Service are subject to the existing guidelines in [550 FW 3.3C](#). The Order will expire September 30, 2001, unless amended, superseded, or revoked. We will include the provisions of this Order in Part 550 of the Fish and Wildlife Service Manual.

/sgd/ JAMIE RAPPAPORT CLARK

DIRECTOR

Date: September 1, 2000

For specific information on the contents of this Director's Order, contact the Division of Federal Program Activities. For additional information regarding the Directives web pages, contact [Hope Grey](#), in the Division of Policy and Directives Management, 703-358-2482.

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550 FW 3

Documenting and Implementing Decisions

FWM#: 248 (new)

Date: March 29, 1996

Series: Environmental Quality

Part 550: National Environmental Policy Act

Originating Office: Division of Habitat Conservation

3.1 Purpose. Fish and Wildlife Service (Service) personnel involved in making and implementing decisions on an action are to establish an appropriate administrative record of the Service's decision. This chapter establishes procedures to ensure that decisions and their implementation are made in accordance with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act (NEPA) (40 CFR 1505) and Department of the Interior (Department) NEPA procedures (516 DM 1-6).

3.2 Scope. This chapter addresses the Service's preparation of the record of decision (ROD), finding of no significant impact (FONSI), and environmental action statement (EAS); and the implementation and monitoring of the Service's decision. Refer to the NEPA Reference Handbook, authorized in [550 FW 1.7](#), for full texts of various NEPA authorities and checklists and samples for the preparation of environmental documents; and [550 FW 2](#), for public review procedures for the notice of intent (NOI) to prepare an environmental impact statement (EIS), the EIS, and environmental assessment (EA).

3.3 NEPA Decision Documents.

A. Record of Decision (ROD).

(1) Making the Decision. Following completion of an EIS (see [550 FW 2](#)), the Service shall prepare a ROD. The ROD is a concise public record of the decision, which may be integrated into any other record prepared by the Service.

(2) Content of the ROD. The content of the ROD is to be the same as described in 40 CFR 1505.2. Any conditions adopted for monitoring or enforcement must be addressed in the ROD (40 CFR 1505.3). [Exhibit 1](#) is an example of a ROD. [Exhibit 2](#) is an example of a notice of availability (NOA) of the ROD in the Federal Register.

(3) Processing and Distributing the ROD. The decision to implement an action cannot be made sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the final EIS in the Federal Register. After 30 days, the ROD, signed by the Service decisionmaker

(see [550 FW 1.6](#)), shall be made available to the affected public by appropriate public notice.

Appropriate public notice can include publication in the Federal Register, or by other means to ensure that the ROD is made available to the affected public [40 CFR 1506.6(b)].

(4) Implementing the Action in the ROD. The action may be initiated immediately upon signature of the ROD by the appropriate Service decisionmaker. The Service must substantially comply with the decision made in the ROD. The actions, terms, and conditions stated in the ROD are enforceable by Federal agencies and private parties. The ROD can be used to compel compliance with or execution of mitigation, monitoring, and enforcement measures identified therein (40 CFR 1505.3). The Service should make a diligent effort to involve the public in the implementation of the action (40 CFR 1506.6).

B. Finding of No Significant Impact (FONSI).

(1) Making the Decision. The EA serves as the basis for determining whether implementation of the proposed action would constitute a major Federal action significantly affecting the quality of the human environment. If a positive finding is made, an EIS is required. If a negative finding is made, a FONSI is prepared and signed. Either finding will be based on the information presented in the text of the EA. The text of the EA should provide sufficient factual material to support the finding. Determinations of major Federal actions and significant effects on the human environment are subject to varying interpretation, and no hard-and-fast rules are available to label an action conclusively one way or the other. The need to prepare an EIS is a matter of professional judgment requiring consideration of all issues in question, particularly all information documented in the EA.

(2) Criteria to Assist in Determining the Need to Prepare an EIS. It is important to be as objective as possible when making a determination on whether to prepare an EIS. For general guidance on what may constitute a "major Federal action" and "significant effect," refer to 40 CFR 1508.18 and 1508.27, respectively. In addition, one or more of the following criteria, depending on the severity and duration of effects, may trigger the preparation of an EIS.

(a) Controversy over environmental effects (e.g., major scientific or technical disputes or inconsistencies over one or more environmental effects).

(b) Change in Service policy having a major positive or negative environmental effect.

(c) Precedent-setting actions with wide-reaching or long-term implications (e.g., special use permits for off-road vehicles, mineral extraction, new road construction).

(d) Major alterations of natural environmental quality, that may exceed either local, State, or Federal environmental standards.

(e) Exposing existing or future generations to increased safety or health hazards.

(f) Conflicts with substantially proposed or adopted local, regional, State, interstate, or Federal land use plans or policies, that may result in adverse environmental effects.

(g) Adverse effects on designated or proposed natural or recreation areas, such as wilderness areas, parks, research natural areas, wild and scenic rivers, estuarine sanctuaries, national recreation areas, habitat conservation plan areas, threatened and endangered species, fish hatcheries, wildlife refuges, lands acquired or managed with Dingell-Johnson/Pittman-Robertson funds, unique or major wetland areas, and lands within a 100-year floodplain.

(h) Removal from production of prime and unique agricultural lands, as designated by local, regional, State, or Federal authorities; in accordance with the Department's Environmental Statement Memorandum No. ESM 94-7.

(i) Adverse effects on municipal, industrial, or agricultural water supply or quality; or major consumptive use or other long-term commitment of water.

(j) Condemnation of property rights or fee title to land; or large-scale relocation of people, homes, commercial, industrial, or major public facilities.

(3) Content of the FONSI. The content of the FONSI is to be the same as discussed in 40 CFR 1508.13. Also refer to 516 DM 2.3C. [Exhibit 3](#) is an example of a FONSI.

(4) Processing and Public Availability/Review of the FONSI.

(a) The FONSI, signed by the Service decisionmaker, is an "environmental document" under 40 CFR 1506.6(b) and, therefore, must be made available to the affected public. A combination of methods may be used to provide notice, tailored to the needs of the particular case. Local mailings, publication in newspapers, radio announcements, and other means, including publication in the Federal Register, may be used.

(b) The FONSI must be made available for public review if the proposed action would be located in a floodplain or wetland, pursuant to Executive Orders 11988 and 11990, respectively.

(c) In certain cases, the Service must make the FONSI available for public review for 30 days before the action can be implemented, in accordance with 40 CFR 1501.4(e)(2). If the EA was not previously made available for public review, it should be made available for public review at the same time the FONSI is circulated. The criteria for circulating the FONSI are as follows.

(i) The proposal is a borderline case (i.e., there is a reasonable argument for preparation of an EIS).

(ii) The proposal is an unusual case, a new kind of action, or a precedent-setting case.

(iii) There is either scientific or public controversy over the proposal.

(iv) When the FONSI involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Refer to 516 DM 6, Appendix 1.5B. See 550 FW 3.3B(6).

(5) Implementing the Action in the FONSI.

(a) The action may be initiated immediately following completion of 550 FW 3(B)(4). The Service must substantially comply with the decision made in the FONSI. The Service should make a diligent effort to involve the public in the implementation of the action (40 CFR 1506.6).

(b) When the initial proposed action in the EA integrates mitigation measures, without which the proposed action would cause significant effects, those mitigation measures are enforceable, thereby precluding the preparation of an EIS or reevaluation of the proposal. If those mitigation measures are not implemented, an EIS or reevaluation of the proposal would be required (40 CFR 1508.8 and 1508.27).

C. Environmental Action Statement (EAS).

(1) Purposes of the EAS. The purposes of the EAS are:

- (a)** to establish a process for internal review of Service NEPA-related decision documents at the Regional and Washington Office level to ensure inter-program coordination, and
- (b)** to provide an appropriate administrative record of NEPA-related decisions at all management levels of the Service.

(2) Actions for which an EAS should be Prepared. An EAS should be initiated by the Service office responsible for preparation of the NEPA documents. An EAS should be prepared when the following circumstances occur.

- (a)** To facilitate internal inter-program review and final approval when a FONSI is to be signed at the Service Washington or Regional Office level.
- (b)** To document a normally categorically excluded action that may be controversial.
- (c)** To document emergency NEPA actions pursuant to 40 CFR 1506.11.
- (d)** When, after the review of an EA, a decision is made to publish an NOI in the Federal Register announcing the decision to prepare an EIS.
- (e)** When a proposed action is not approved because of unacceptable environmental damage, or violation of Service mandates, policy, regulations, or procedures.
- (f)** Whenever additional internal review and/or documentation of the NEPA administrative record is desirable.

(3) Content of the EAS. The EAS will consist of a one-page document indicating the proposal, the Service decision, references to supporting documents (if any), and a signature block. The format of the EAS should be in accordance with [Exhibit 4](#).

(4) Processing the EAS. The EAS will accompany the decision documents for the action through the surname and signature process. The EAS will be signed no sooner than when the decision is made on a categorical exclusion, or when the ROD or FONSI is signed.

(5) Signature Approval of the EAS. The signature approval blocks ([Exhibit 4](#)) may be modified to accommodate the Service office where final signature approval occurs.

- (a)** At the field office level, the signature block would normally include the signature and date of the originator and the field office supervisor.
- (b)** At the Regional Office level, the signature block would normally include the signature and date of the originator, the Regional Environmental Coordinator, appropriate Assistant Regional Director(s) or their designees, and the Regional Director.
- (c)** At the Washington Office level, the signature block would normally include the signature and date of the originator, the Washington Office Environmental Coordinator, the appropriate Assistant Director(s) or their designees, and the Director.

(6) Distribution of the EAS

- (a)** The EAS is part of the Service's NEPA administrative record for an action. Although it is not normally distributed to the public, the Service shall provide a copy of the EAS to the public whenever requested in the same manner as other NEPA environmental documents [40 CFR 1506.6(f)].
- (b)** The original EAS should be maintained by the Service office originating the action.
- (c)** A copy of the EAS should be provided to each Service office indicated on the signature block; the Washington Office or Regional Office Environmental Coordinator, as appropriate; and other affected Service offices.

3.4 Implementing and Monitoring the Decision. Until the Service issues the ROD or FONSI, as appropriate, no action concerning the proposal shall be taken (40 CFR 1506.1). When the Service implements an action, that action must be carried out in substantially the same manner as addressed in the ROD or FONSI. Mitigation and other conditions committed as part of the decision should be implemented. The Service may provide for monitoring to assure that decisions are carried out, and should do so in important cases (40 CFR 1505.3).

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NEPA COMPLIANCE CHECKLIST

State: Federal Financial Assistance Grant/Agreement/Amendment Number:

Grant/Project Name:

This proposal is: ☐ is not completely covered by categorical exclusion No(s)., 516 DM 6 Appendix 1. If a categorical exclusion must be identified before completing the request for funding, and the categorical exclusion cannot be identified, or the proposal cannot meet the requirements for a categorical exclusion, an EA must be prepared.)

Exceptions:

Will This Proposal (check (✓) yes or no for each item below):

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Have significant adverse effects on public health or safety. |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Land marks. |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Have highly controversial environmental effects. |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects. |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places. |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species. |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act. |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment. |

(If any of the above exceptions receive a "Yes" check (✓), an EA must be prepared.)

Concurrences/Approvals:

Project Leader: _____ Date: _____

State Authority Concurrence: _____ Date: _____

(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

- ☐ is a categorical exclusion as provided by 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.
- ☐ is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1. An EA must be prepared.
- ☐ includes other attached information supporting the Checklist.

Service signature approval:

RO or WO Environmental Coordinator: _____ Date: _____

Staff Specialist, Division of Federal Aid: _____ Date: _____

(or authorized Service representative with financial assistance signature authority)

Embedded Secure Document

The file *<http://www.fws.gov/directives/e1do127.pdf>* is a secure document that has been embedded in this document. Double click the pushpin to view e1do127.pdf.



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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

DIRECTOR'S ORDER NO. 127, Amendment 1

Subject: National Environmental Policy Act Compliance Checklist

Director's Order No. 127, September 1, 2000, is changed as follows:

1. Section 5 is amended to read:

Sec. 5 What is the policy?

a. You must prepare a NEPA Compliance Checklist (Form 3-2185) for most Federal financial assistance actions (including major amendments) that we administer (concur or approve) within the scope of Sections 6, 7, and 8 of this Order. Include the Checklist in the administrative record for the Federal financial assistance action.

b. Modifications to the use of the NEPA Compliance Checklist and modifications pertaining to this policy (e.g., Regional agreements to streamline the review of NEPA Compliance Checklists by the Regional Environmental Coordinators for categorically excluded actions) require prior approval by the Assistant Regional Director for Ecological Services and the Assistant Director for Fisheries and Habitat Conservation.

2. Section 12, subparagraph a, is amended to read:

a. The Service signature approval blocks must include the Regional or Washington Office Environmental Coordinator, as appropriate, for any Federal financial assistance actions for which a Checklist was prepared pursuant to Section 6, subject to Regional modifications as described in Section 5b.

3. Section 14 is amended to extend the termination date to September 30, 2002.


Acting **DIRECTOR**
Deputy

Date: September 28, 2001



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

DIRECTOR'S ORDER NO. 127, Amendment 2

Subject: National Environmental Policy Act Compliance Checklist

This amends Section 14 of Director's Order No. 127, September 1, 2000, to extend the termination date to September 30, 2003.


Deputy DIRECTOR

Date: September 30, 2002



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

DIRECTOR'S ORDER NO. 127, Amendment 3

Subject: National Environmental Policy Act Compliance Checklist

This supersedes Amendment 2 and amends Section 14 of Director's Order No. 127, September 1, 2000, to extend the termination date to September 30, 2004.


Acting DIRECTOR

Date: September 30, 2003